



(Unapproved and subject to change)
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF HEARING, Public Session
Thursday, September 21, 2017

Under Government Code section 11123(a), all meetings of a state body are open and public, and all persons are permitted to attend any meeting of a state body, except as otherwise provided in that article. The section further states that the portion of the teleconferenced meeting that is required to be open to the public must be audible to the public at the location specified in the notice of the meeting. The Commission may take action on any item listed on this agenda.

CALL TO ORDER

Chair Remke called the meeting to order at 10:00 am on September 21, 2017, at the Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, CA 95811. Chair Remke and Commissioners Audero, Hatch and Hayward were present.

Welcome

Jodi Remke, FPPC Chair

Chair Remke: Okay, we're going to go ahead and get started. I would just like to make a comment. To the extent a lot of you are here regarding AB249, it's going to be quite a while until we get there and I would just offer the suggestion that you can stay out in the fresh air and we would pause and make sure that you are notified when the matter is brought up if you would like that. But I will make sure we pause and get outside and let you know, but stay near the building or alert people where you are.

Gentleman from Audience: Just reverse the schedule. We're all here.

Chair Remke: Well, because we have a lot of other people here as well, thank you. Okay, let's go ahead and take roll.

Chair Remke: Okay, good morning everyone. I would just like to start -- to take a moment to thank staff for some excellent outreach efforts they made last week at the League of California Cities conference here in Sacramento. As many of you know, that conference reaches out to about 400 cities and has almost 2,000 attendees. Executive Director Erin Peth was on a panel entitled The Public Official and the FPPC: Silent Partners in Transparency, which was very well received. Thank you, Erin. And also, I'd like to thank Trish Mayer and Courtney Miller, who coordinated the booth at the conference, which allows people to come up, ask questions, share information, some hands-on demonstrations navigating our website. Again, it was really well received. They led it and other staff helped as well, so again thanks to everyone for their efforts

in that. I think it's a wonderful opportunity for us to connect directly with the cities and the public officials and the clerks of those cities who we deal with every day, so thanks to everyone.

Public Comment

- 1. Public Comment.** This portion of the meeting is reserved for comment on items not on the agenda. Under the Bagley-Keene Act, the Commission cannot act on items raised during public comment, but may respond briefly to statements made or questions posed; request clarification; or refer the item to staff.

Chair Remke: We'll start with any public comment regarding a matter that is not on the agenda. Okay, seeing none, we will jump right into Item 2, approval of the Commission minutes from August.

Approval of Commission Minutes

- 2. Approval of August 2017 Commission Hearing Minutes.**

Chair Remke: Do the commissioners have any comments or corrections on the minutes? Commissioner Audero.

Commissioner Audero: No, go ahead, I'll cede to Commissioner Hatch.

Commissioner Hatch: That's alright. You go ahead.

Chair Remke: Okay, so one of you go ahead.

Commissioner Audero: So I just want to make a comment about the minutes in general. You know, and I know that we have a -- there are recordings of the -- of our meetings on YouTube and that obviously, anybody can watch it. I actually, I guess, have a question, Mr. Woodside. How long are these recordings stay? How long do they stay on YouTube?

General Counsel Jack Woodside: Excuse me, as far as I know they made there's no date where they drop off youtube.

Commissioner Audero: Okay.

Chair Remke: and then we have backups of the YouTube tapes and we have audio recordings of all the meetings which are held indefinitely.

Commissioner Audero: Okay, so, that's lovely. So -- but to the extent that people read the minutes, I think it's important that they reflect a little bit more detail about what happened. As I've been kind of looking over some of the past minutes, I find it really, I guess, interesting how the minutes are put together and what they reflect, because they're

not as complete as I think they should be, and this is -- Sasha, please don't take this personally. I know that this started well before you came on board and it's not -- you know, it's just kind of a general comment that I think we need to be mindful of that the minutes for example reflect that we ask questions and we know that people answer them and they don't reflect the answers, unless they're a question asked by the Chair, in which case they do reflect the answer, which I find quite interesting. I mean, if we look at the July meeting, Mr. Rios spoke a lot more than the two lines that are reflected. I asked a question later, no answer, but there was an answer. Mr. Hildreth spoke just as long as Mr. Rios. He got more than twice as much lines as Mr. Rios. Commissioner Hatch asked a question. Well, that one has an answer. I asked another question, no answer. Commissioner Hatch asked a question, no answer. I mean, and then, you know, we closed the meeting. I had a lot to say, I admit. I probably got -- I don't know, it was summarized into four lines. Chair Remke had a lot to say. Every single point that she made was summarized, so I think that we have to be -- I would ask that we be a little bit more mindful of providing a more complete record, even if you -- I get that we can't get word for word of what's said, but it has to be more impartial than the way that it's structured, historically what I've seen, so that would be the only comment that I have on the minutes in general, and I know it doesn't go to the approval of the August minutes, although we have to figure out what to do with the August minutes and the amendment that Commissioner Hatch had asked for as to the July minutes, so I think Commissioner Hatch, were you going to make a comment about that or --

Commissioner Hatch: That was my plan, yes.

Commissioner Audero: Okay, then I'll cede the floor to you.

Chair Remke: Commissioner Hatch.

Commissioner Hatch: With reference to our minutes before us here for approval, there's a brief item about my motion to substitute a transcript I prepared as an addition to the minutes, and you'd indicated that you had not had a chance to look at it, and so I modified my motion to allow that you have time to do that, and assuming that it's -- if it's what you think you said, then it would go into the minutes or the minutes would be modified. I don't see that in here and I would have to ask, were those accepted or modified or have they been added to the minutes of the previous meeting?

Chair Remke: Yes, I reviewed them, accepted them, they were amended by Sasha, and they are finalized as you proposed.

Commissioner Hatch: Okay, thank you. I appreciate that. It would have been nice to have some kind of indication.

Chair Remke: Well, I had suggested we bring it back and that was declined at the last meeting, but, I'll just again verify that I did review your suggested amendments, approve them. The minutes have been modified as such, and they were finalized.

Commissioner Hatch: Okay, thank you.

Commissioner Audero: May I have the floor?

Chair Remke: Commissioner Audero.

Commissioner Audero: Thank you. So I pulled the minutes, the July minutes, a couple of days ago. Have they been revised and put up on the website?

Sasha Linker, Commission Assistant: The approved minutes are not on the website. I do have them if you'd like to see them.

Chair Remke: None of the approved minutes are on the website, is her point. They're always what's proposed from the meeting before if that's what you looked to, the prior agenda. We could perhaps put a portal on the website for approved minutes. We just never had had it requested and if asked, it can be provided, but we can have a section on the transparency portal, I guess, of approved minutes or under the prior agendas.

Commissioner Audero: So what I pulled up was -- it says "minutes of the hearing July 27," and up at the top it says "unapproved and subject to change," and it doesn't have what Commissioner Hatch had moved to have added to it.

Chair Remke: That's correct. That was what was presented at the last -- not the finalized ones, which we just discussed, are not available on the website, but can be made available if that's the request or again, Sasha could forward the final ones to you.

Commissioner Audero: I think they should just be on the website for the public.

Chair Remke: Okay, we will work towards putting all prior minutes on the website.

Commissioner Hatch: Well, more to the point, if the minutes were corrected, then what we display on the website should show the corrected ones.

Chair Remke: Okay, again, to clarify, what is on the website is what's in your packet every month as part of the agenda, which are the proposed minutes to be approved. Then we go through it at the meeting. Changes are made. It's voted on and finalized. Sasha, as the commission assistant, maintains that record, as been the practice for the past 30 plus years, and so if requested by any member of the public or commissioner, those finalized approved minutes are available. We used to keep them in a binder, but we're trying to get away from paper, so everything's electronic and again, that's been the

practice. If the request now is to have that finalized approved minute packet on the website, we can do so.

Commissioner Audero: I think that would make sense. I didn't read anything on the website -- and perhaps I missed it -- that says -- that tells the public how to request the final version of the minutes, so I wasn't even aware that that was a possibility, so that's why there was a concern on my part that what is on the website, in whatever form and for whatever reason and for however many years, doesn't really reflect what happened.

Commissioner Hatch: So electronically, what we have here is that all the past corrections made over the years are -- public's just basically in the dark unless they have, you know, the fortitude to come in and ask us for paper because there's no way for them to even tell that there were corrected minutes and what they -- what the content was. It seems crazy.

Chair Remke: So again, we can go ahead and put the finalized minutes on the website.

Commissioner Hayward: For myself, I'd be in favor of that.

Chair Remke: Okay, that's what we'll do. Any other questions or comments regarding the August commission minutes?

Commissioner Hayward: Well, I think after that, that I would move approval.

Commissioner Hatch: Second.

Ayes: Commissioners Audero, Hatch, Hayward, and Chair Remke.

The motion passed 4 to 0.

Consent Calendar 3-39

Chair Remke: Okay, the enforcement consent calendar, Ms. West, and I understand you have three items you're pulling from the consent calendar, or pulling from the agenda. I should clarify. They will be pulled from the agenda.

Galena West, Chief of Enforcement: Correct. I'll be pulling items 6, 8, and 11. Galena West, Chief of Enforcement. You guys startled me. You finished so quickly.

Chair Remke: So 6, 8, and 11 are pulled from the agenda.

Galena West, Chief of Enforcement: Correct. We're happy to say we reached a settlement on the default that we were presenting at the last possible moment, so we're happy to report that.

Commissioner Audero: Congratulations.

Galena West, Chief of Enforcement: Thank you.

Commissioner Hayward: So we will be seeing that stip next month?

Galena West, Chief of Enforcement: Next month.

Commissioner Hayward: Okay.

Galena West, Chief of Enforcement: We'll double check it all first, but yes. Excellent.

Commissoiner Hatch: Chair Remke, if you'd bear with me. I'm trying to find my notes on the ones that I want to pull. I apologize.

Chair Remke: Okay, while you look for that, I'll ask the other commissioners if there are any items they would like to pull from the --

Commissoiner Hatch: Thank you.

Chair Remke: -- consent calendar.

Commissioner Audero: None, thank you.

Commissioner Hayward: I don't think I have any either. Thank you.

Chair Remke: Let me know when you're ready, Commissioner.

Commissoiner Hatch: I apologize. I'm having computer trouble. I usually email these things to myself and I didn't have time this month.

Commissioner Hayward: It's our lightning efficiency again. It's catching people off (overlapping).

Galena West, Chief of Enforcement: I know. I was sitting there and swinging my feet and all of a sudden --

Commissioner Hayward: You've got your curtain call. There you are.

Commissoiner Hatch: I think we're getting close. Closing in on it now. Okay. I had questions on item 3 -- oh, I'm sorry, those were answered.

Chair Remke: And again, this is not regarding questions; this is regarding items you'd like to be pulled from consent.

Commissoiner Hatch: Right, thank you. Item 7, I think -- that's it. The rest --

Chair Remke: Okay, regarding the remaining items on consent, do the commissioners have any questions for Ms. West?

Commissioner Hayward: I don't.

Commissioner Audero: No. I don't either.

Commissoiner Hatch: No.

Chair Remke: Okay, is there any public comment regarding the remaining items on consent? Seeing none, is there a motion?

Commissioner Hayward: I move the consent calendars items 3 through 39 except for 6, 8, and 11, which were pulled from the agenda, and 7 that Commissioner Hatch --

Commissioner Audero: Second.

Ayes: Commissioners Audero, Hatch, Hayward, and Chair Remke.

The motion passed 4 to 0.

Behested Payments

- 3. In the Matter of Tony Rackauckas; FPPC No. 16/612.** Staff: Assistant Chief of Enforcement Dave Bainbridge and Special Investigator Paul Rasey. Tony Rackauckas, the District Attorney for Orange County, failed to timely report 14 payments of \$5,000 or more made at his behest to the Orange County Gang Reduction and Intervention Partnership, a non-profit organization, in violation of Government Code Section 82015, subdivision (b)(2)(B)(iii) (14 counts). **Total Proposed Penalty: \$21,000.**

Campaign Reporting

- 4. In the Matter of Douglas Hanson, Committee to Re-Elect Mayor Doug Hanson to Indian Wells City Council 2012, and M. Elena Hanson; FPPC Nos. 14/549 and 14/775.** Staff: Commission Counsel Christopher Burton, Senior Commission Counsel Neal Bucknell, and Special Investigators Ann Flaherty and Jay Martin. Douglas Hanson was a candidate for the Indian Wells City Council in the November 6, 2012 General Election. Committee to Re-Elect Mayor Doug Hanson to Indian Wells City Council 2012 was his candidate-controlled committee. M. Elena Hanson was the Committee's treasurer. The Committee, Hanson, and Hanson failed to timely report: expenditures and a contribution on the semiannual campaign statement covering the reporting period of January 1, 2012 through June 30, 2012; a contribution on the pre-election campaign statement covering the period of July 1, 2012 through September 30, 2012; accrued expenses, contributions, expenditures, and reimbursements on the pre-election campaign statement covering the reporting period of October 1, 2012 through October 20, 2012; and expenditures, contributions, and reimbursements on the semiannual campaign statement covering the period of October 21, 2012 through December 31, 2012, in violation of Government Code Section 84211 (2 counts); Additionally, the Committee, Hanson, and Hanson paid expenditures with personal funds without first depositing them into the Committee's designated bank account, in violation of Government Code Section 85201 (1 count). **Total Proposed Penalty: \$7,500.**

Conflict of Interests

- 5. In the Matter of Simon Lee; FPPC No. 16/677.** Staff: Assistant Chief of Enforcement Dave Bainbridge and Special Investigator Garrett Micheels. Simon Lee was an alternate commissioner on the City of San Marino Planning Commission from July 2014 to

January 2015. Prior to that, he was a member of the City of San Marino Design Review Committee for four years. While serving on the Design Review Committee, Lee twice voted in favor of applications submitted by clients of his architectural firm, in violation of Government Code Section 87100 (2 counts). Lee also failed to disclose sources of income on the Statements of Economic Interests filed for his positions on the Design Review Committee and the Planning Commission in violation of Government Code Sections 87202, 87204, and 87300 (2 counts). **Total Proposed Penalty: \$10,000.**

- 6. In the Matter of Kathrin Sears; FPPC No. 17/453.** Staff: Senior Commission Counsel Bridgette Castillo, Special Investigator Marshall Miller and Political Reform Consultant Chloe Hackert. Kathrin Sears is a Marin County Supervisor and the Chair of the MCE Clean Energy Board. In November 2014, Sears signed a contract on behalf of MCE Clean Energy Board with Shell Energy North America for hydroelectric power while she owned stock in Royal Dutch Shell, a parent company to Shell Energy North America, in violation of Government Code Section 87100 (1 Count). **Total Proposed Penalty: \$3,000.**

Advertisement Disclosure

- 7. In the Matter of R4: Redondo Residents for Responsible Revitalization; FPPC No. 15/112.** Staff: Assistant Chief of Enforcement Dave Bainbridge and Special Investigator George Aradi. R4: Redondo Residents for Responsible Revitalization is a ballot measure committee opposing Measure B on the March 3, 2015 Special Election ballot in the City of Redondo Beach. The Committee failed to properly identify the committee name on its advertisements in violation of Government Code Sections 84305, subdivision (a) and 84504, subdivision (c); and Code of Regulations, title 2, section 18450.4, subdivision (b)(1) (1 count). **Total Proposed Penalty: \$3,000.**

Chair Remke: Okay, so we'll take up item 7. Commissioner Hatch, if you'd like to start.

Commissioner Hatch: In reviewing the stip with reference to this item, this looked like a grassroots organization that was short on experience and long on enthusiasm and from the factors that were displayed in the stip, I thought that the fine was probably on the high side, and I know that these are done, you know, conscientiously using comparables that they can find, but in the case of the stuff that they had put out, which was pretty, you know, low budget, they had actually put website references on the materials and so I think they probably thought they were complying, but they obviously were not, and so I would -- on a longer term basis, I would like to see that we could develop a policy where we sort of categorized these things where we got professionals doing it versus newbies or inexperienced folks who are not well versed in this stuff, and certainly in the first time instances, so I don't know if it'd take a motion, but I would like to reduce the fine to \$1,000.

Galena West, Chief of Enforcement: Okay, Galena West, Chief of Enforcement. In general, you would just reject the stipulation with direction with three votes of the commission, an explanation of the fine. In this case, these charges could've been for each set, so the fliers, the door hangers, the mailers could've all been charged separately, which we consolidated into one. The other problem with this committee is that they were primarily formed in support -- I think it was in support of Measure B or opposed to Measure B.

Chair Remke: Opposed.

Galena West, Chief of Enforcement: Opposed to Measure B, and so with that not being in their name, the entire time that they were in existence, it was misleading to the public that they were just R-4 and not showing that they're actually opposed to the measures, so --

Commissioner Hatch: Their content said that they were opposed, correct?

Galena West, Chief of Enforcement: True, but when you don't know who sends the content, then you don't know how to evaluate it, so if you say you're a committee to support puppies and then you send out mailers about a measure, we don't really know who you are and so the whole point of making sure that primarily formed committees have specific rules to identify their true interest is to help the voters to evaluate the information that they receive so for this, we didn't charge them with not changing their committee name, which is generally a second count, because we took into consideration that they're smaller and limited activity to one election. I would caution that when you're differentiating between newly formed committees and other committees, a lot of committees only form per election, so it's generally the same people that are active in their jurisdictions, but it's just a different election with a different committee name, and so you start fresh, so to speak. You might be the same person, but unless you've actually signed as the treasurer, which sometimes it's a professional treasurer, then we don't keep a record of you as a prior offender, so keeping that in mind, it's difficult sometimes to draw the distinction between newbies and people (overlapping).

Commissioner Hatch: You mean if we'd fined them before, that wouldn't come up?

Galena West, Chief of Enforcement: Well, a lot of these committees -- the only people that are liable under the act are the treasurers, an assistant treasurer if they sign that statement, or the principal officers of the committee, so you only have to identify one principal officer as the person making the decisions, so if you generally switch out people, then it's much harder in these elections to try to track how sophisticated a party is, so we don't put so much credence in that, but we do take it in consideration, like in here, by not charging not changing the committee name and only charging one count instead of four counts, so we really did try to take in consideration and as I've mentioned in passing to people, one of the things that enforcement is looking at for a future project is to expand the streamline programs to include a minor advertisement violation section, so that we can deal with -- when there's generally only one violation of the advertising sections, like they didn't get the font size exactly correct,

and be able to add that to the streamline program, so that is something that we're looking at. In this case, they had two violations of the -- I don't even know if they would qualify for this imaginary streamline program yet, but -- so that's why the fine is what it is: because there was a substantial amount of activity in a local election and in local elections, as you know, it's -- this much activity really could make a difference.

Commissioner Hatch: Uh-huh.

Chair Remke: So because it was over 4,000 fliers, two sets of door hangers, and mass mailing, all failed to comply?

Galena West, Chief of Enforcement: Correct.

Chair Remke: So I mean, I think it's pretty serious violation. I think there's a roomful of people here who think failure to properly disclose who's behind a ad thinks it's a serious violation.

Galena West, Chief of Enforcement: The irony has not escaped me, as everyone is -- I can feel them staring at my back.

Chair Remke: And I would --

Commissioner Hatch: If I'm supposed to be intimidated by that, I'm not.

Chair Remke: (Overlapping) It's not that you're intimidated intimidated.

Commissioner Hatch: I have no shame and I'd just like to make sure that people aren't --

Chair Remke: I'm actually still talking.

Commissioner Hatch: -- unfairly dealt with and the way I --

Galena West, Chief of Enforcement: Correct.

Commissioner Hatch: -- explore that is to have this conversation --

Chair Remke: Correct, sure. I'm just actually --

(Both voices overlapping.)

Commissioner Hatch: I was speaking.

Chair Remke: No, actually, I was when you interrupted, but thank you. So my point just being that I do think that advertisements in general are serious and I wouldn't want us to set a policy where we start talking about lowering those fines. I do think it's a case by case and I think this case was handled appropriately, as Ms. West took into consideration those factors to lower what normally would be a higher fine for these types of violations.

Commissioner Hatch: Are you finished?

Chair Remke: Commissioner Hatch.

Commissioner Hatch: Had you not interrupted me the first time, I would've told Galena that I was satisfied with her explanation. We had also talked about -- and I know this is not exactly on point, but I would've had to pull a bunch of items off of the consent calendar to do so, but in general, I thought that the streamline program could use some fine tuning to provide a higher base fine for 24 hour violations and actually to consider also increasing the one percent to a higher number, because it has almost no impact. If you have a large 24 hour contribution or expenditure that's not, you know, not reported, the one percent really doesn't change it, so it sort of puts -- makes them all equal, a small, you know, dollar violation would be virtually the same as a huge dollar violation. I don't think that is really what we're -- we should be trying to do. That's all I have on that, thank you.

Commissioner Audero: I do have a question on that.

Chair Remke: Commissioner Audero.

Commissioner Audero: Thank you. So just following up on what Commissioner Hatch said -- and I understand that, you know, maybe trying to figure out where the proper line is between a newbie and a not-newbie, you know, that's just a bit difficult and I would not want to have that kind of a rule and then have you come and talk to us every time and then we have a debate about whether the person is a newbie or is not a newbie. That said, I'm interested in whether these people actually were newbies. What do we know about these people and what was taken into consideration about their level of expertise and, you know, and how they responded, et cetera, but what do we know about these people, because I really do think that even if we don't have a bright line, which I think would be difficult and I would never endorse, we should take into consideration that, along with all the other mitigating factors, what do we know?

Galena West, Chief of Enforcement: Certainly, and this was a group of citizens opposed to a large scale development in their area, and although we didn't research each of the citizens, we took for granted that they were inexperienced, which is why we combined the counts and didn't charge the other count: because it is very -- you can see by the way that we wrote it, it's like we tried to give the impression that we think that they got involved, they ended up raising more money than they expected, and then they started spending it, but they never asked for advice. They never reached out to anyone. They never -- so there's also things that you're, like, well, we have so many resources available and reach out to these jurisdictions and say, you have an election coming up. Here's a -- we're offering classes in your area. I mean, our education division goes all over the state and so while we take into consideration and in this case we definitely did, we also take into consideration, you have to make a little effort to follow the rules as well.

Commissioner Audero: Right, no, I totally agree with that. I just -- I have a personal friend of mine who went through this process and said it was just a nightmare, right? She was in a tiny little town. This poor woman, I mean --

Galena West, Chief of Enforcement: Please don't say that was one of my cases.

Ms. Audero: No, no, but what I -- if I were to run for office and God forbid, but if I were to run for office, I would be very intimidated by this entire process if I didn't know anything about it. And I understand that there are resources, et cetera, but I think that we have to try to ensure that our fines aren't such that they chill the running for office. My friend will never run for office again, given her experience, and at the end of the day, I think that's a very sad shame, because she's brilliant. She's very talented. She could contribute a lot to government, and so I think we have to try to find that line, right? I mean, these people are now going to have to fork up \$3,000 whether it's a little or a lot or whatever it is, and, you know, I want to make sure that they don't think, you know, do I ever want to do this again? Do I ever want to get involved again?

Galena West, Chief of Enforcement: And I hope that the experience for them -- because they were dealing with our assistant chief and -- who would help educate them, help them understand the rules, help them find the ways to easily follow the rules next time, and that they learn from this and they say, well, actually, this experience with enforcement wasn't that bad because we also learned all of this, so that if we ever want to oppose a development again or if we ever want to oppose an ordinance in our -- so my hope is that this actually comes out in a positive way, because we definitely -- we have a person assigned to us in the education division that we refer people to and say, you know, ask your questions. She'll help you with your filing. She'll help you figure things out and learn from it, and I hope that maybe your friend ran a while ago.

Commissioner Audero: I'll have her call you.

Galena West, Chief of Enforcement: -- because now we have the candidate toolkit on the website. We have other resources that the education division's come up with to try to help people, so we never forget that one of the missions of the agency is education, as well as enforcement. So we do try to take that in consideration.

Commissioner Audero: Thank you.

Commissioner Hatch: Follow up on that, if I could.

Chair Remke: Commissioner Hatch.

Commissioner Hatch: Are the city clerks required to provide some minimal amount of information that would direct them to the FPPC and their oversight responsibilities?

Galena West, Chief of Enforcement: They have filing officer duties that they have to comply with on what they can -- what they provide and then we work with the city clerks in order to identify ones that need more assistance and we refer them to the education division. They reach out to them and say, here's some more you can do in this area. We'll come and do a seminar. We'll assist you in any way we can.

Commissioner Hatch: So if I, you know, file for city council, let's say, you know, at that point the city clerk would give me some information that would sensitize me to the need (overlapping)?

Galena West, Chief of Enforcement: Correct, your city clerk would be the one that assists you with your --

Commissioner Hatch: And they would do that --

Galena West, Chief of Enforcement: Uh-huh.

Commissioner Hatch: -- as a matter of course? Thank you.

Chair Remke: Any further questions from the commissioners regarding this item?

Commissioner Hayward: I have two cents.

Chair Remke: Okay.

Commissioner Hayward: Maybe two and a half cents, which is -- you know, since it's not an agenda item, talking about the streamline for ads is something that we should do at a later point, but, you know, there's common law on this topic. The Macintyre case was all about, you know, disclosures on, you know, a flier that Mrs. Macintyre had put together at a -- I think it was a school board meeting or something and the Ohio Election Commission coming after her for not having the proper disclaimer and the court saying, no, you do not get to fine this lady tons and tons of money for this act of speech, and it seems like a streamline type setup would accommodate those constitutional concerns, which I know as an FPPC commissioner, I'm not supposed to talk about, but I will anyway. Thank you, Mr. Hildreth, wherever you are. But, you know, we have to balance a vivid constitutional concern with another important goal of ours, which is public information so the people can evaluate whether or not the message is something that they want to give credence to. At the local level, that can be really difficult. I know I'm preaching to the choir, but local issues aren't well covered in the media. They tend to make people's eyes glaze over unless they've really got skin in the game, and so yeah, so that's my two cents. I hope a streamline thing perhaps can be something that we talk about in the future.

Chair Remke: Okay, any public comment on item 7? Seeing none, is there a motion?

Commissioner Hayward: I move approval.

Commissioner Hatch: Second.

Ayes: Commissioners Audero, Hatch, Hayward, and Chair Remke.

Motion passed 4 to 0.

Campaign Non-Filer

- 8. In the Matter of Frank Guzman and 2011 Committee to Elect Frank Guzman to PUSD Governing Board Member; FPPC No. 15/625 (Default Decision).** Staff: Assistant Chief of Enforcement Dave Bainbridge and Staff Services Analyst Dominika Wojenska. Frank Guzman has been a member of the Pomona Unified School District Board since 2011. 2011 Committee to Elect Frank Guzman to PUSD Governing Board Member (also known as Committee to Elect Frank Guzman to Pomona USD School Board 2011) was his candidate-controlled committee. The Committee and Guzman failed to timely file three semiannual campaign statements covering the reporting periods of January 1, 2014 through December 31, 2014, and July 1, 2015 through December 31, 2015, in violation of Government Code Section 84200 (3 counts). **Total Proposed Penalty: \$9,000.**
- 9. In the Matter of Gregory Kelly Meagher; FPPC No. 16/236.** Staff: Senior Commission Counsel Neal Bucknell and Program Specialist Soni Mangat. In 2014, Gregory Kelly Meagher qualified as a major donor. Meagher made independent expenditures in connection with Measure A and Measure B which was on the November 4, 2014 General Election ballot in Butte County. Meagher failed to file four 24-Hour Reports, in violation of Government Code Sections 84203, subdivisions (a) and (b) and 84204, subdivision (a) (1 count); and failed to file one semiannual campaign statement for the reporting period of July 1, 2014 through December 31, 2014, in violation of Government Code Section 84200, subdivision (b). **Total Proposed Penalty: \$4,500.**
- 10. In the Matter of Veronica Guardado for Maywood City Council 2015 and Veronica Guardado; FPPC No. 15/619 (Streamline Settlement).** Staff: Senior Commission Counsel Bridgette Castillo, Special Investigator Marshall Miller, Program Specialist Patricia Ballantyne, and Staff Services Analyst Dominika Wojenska. Veronica Guardado was an unsuccessful candidate for Maywood City Council in the November 3, 2015 General Election. Veronica Guardado for Maywood City Council 2015 is her candidate-controlled committee. The Committee and Guardado failed to timely file a Candidate Intention Statement, in violation of Government Code Section 85200; amendments to the Committee's Statement of Organization, in violation of Government Code Section 84103 (2 counts); two pre-election campaign statements covering the reporting periods of July 1, 2015 through October 17, 2015, in violation of Government Code Section 84200.5 (2 counts); three semiannual campaign statements for the reporting periods of October 18, 2015 through December 31, 2016, in violation of Government Code Sections 84200 (3 counts); and three 24-Hour Reports, in violation of Government Code Section 84203 (3 counts). **Total Proposed Penalty: \$2,135.**

- 11. In the Matter of Voters for Good Government and Billie Martinez, FPPC No. 16/182.** Staff: Commission Counsel Theresa Gilbertson. Voters for Good Government is a general purpose committee. Billie Martinez is the Committee's treasurer. The Committee and Martinez failed to file a Verification of Independent Expenditures Report and failed to disclose contributions received on a 24-Hour Report covering the reporting period of September 1, 2015 through September 2, 2015, in violation of Government Code Sections 84204 and 84213, subdivision (b) (1 count). **Total Proposed Penalty: \$2,000.**
- 12. In the Matter of Charles F. Magill for Judge 2014, Charles F. Magill, and Rohit Joy; FPPC No. 17/375 (Streamline Settlement).** Staff: Chief of Enforcement Galena West and Political Reform Consultant Chloe Hackert. Charles F. Magill was an unsuccessful candidate for Superior Court Judge of Fresno County in the June 3, 2014 Primary Election. Charles F. Magill for Judge 2014 was his candidate-controlled committee. Rohit Joy was the Committee's treasurer. The Committee, Magill, and Joy failed to timely report contributions and expenditures on a pre-election campaign statement for the reporting period of March 18, 2014 through May 17, 2014, in violation of Government Code Section 84211 (1 count); failed to timely file one semiannual campaign statement for the reporting period of May 18, 2014 through June 30, 2014, in violation of Government Code Section 84200 (1 count); failed to timely file one 24-Hour Report, in violation of Government Code Section 84203 (1 count); and failed to timely file a Statement of Organization disclosing when the Committee terminated, in violation of Government Code Section 84101 (1 count). **Total Proposed Penalty: \$1,123.**
- 13. In the Matter of AFSCME Local 3634 PAC and Richard Franden; FPPC No. 17/147 (Streamline Settlement).** Staff: Chief of Enforcement Galena West and Political Reform Consultant Chloe Hackert. This matter arose from an audit performed by the Franchise Tax Board's Political Reform Audit Program. AFSCME Local 3634 is a state general purpose committee. Richard Franden was the Committee's treasurer at the time of the violations. The Committee and Franden failed to timely file five 24-Hour Reports, in violation of Government Code Section 84203 (5 counts). **Total Proposed Penalty: \$1,081.**
- 14. In the Matter of Greg Conlon for State Treasurer 2014, P. Gregory Conlon, and John P. Fronefield; FPPC No. 17/141 (Streamline Settlement).** Staff: Chief of Enforcement Galena West and Staff Services Analyst Hayley Porter. This matter arose from an audit performed by the Franchise Tax Board's Political Reform Audit Program. Greg Conlon for State Treasurer 2014 is a candidate-controlled committee. John P. Fronefield was the Committee's treasurer. The Committee, Conlon, and Fronefield failed to timely file three 24-Hour Reports, in violation of Government Code Section 84203 (3

counts) and failed to timely file one \$5,000 Report, in violation of Government Code Section 85309 (1 count). **Total Proposed Penalty: \$951.**

15. In the Matter of Juan Villegas for Santa Ana City Council 2016 and Juan Villegas; FPPC No. 17/591 (Streamline Settlement). Staff: Chief of Enforcement Galena West and Political Reform Consultant Chloe Hackert. Juan Villegas was a successful candidate for city councilmember of Santa Ana in the November 8, 2016 General Election. Juan Villegas for Santa Ana City Council 2016 is his candidate-controlled committee. The Committee and Villegas failed to timely file one semiannual campaign statement for the reporting period of October 23, 2016 through December 31, 2016, in violation of Government Code Section 84200; and failed to timely file three 24-Hour Reports, in violation of Government Code Section 84203 (3 counts). **Total Proposed Penalty: \$875.**

16. In the Matter of the Committee to Elect Rosalinda Valencia Mayor 2014 and Rosalinda Valencia; FPPC No. 15/183 (Streamline Settlement). Staff: Senior Commission Counsel Bridgette Castillo and Special Investigator Jay Martin. Rosalinda Valencia was an unsuccessful candidate for the Mayor of Lathrop in the November 4, 2014 General Election. Committee to Elect Rosalinda Valencia Mayor 2014 was her candidate-controlled committee. The Committee and Valencia failed to timely file four 24-Hour Reports, in violation of Government Code Sections 84203 (4 Counts). **Total Proposed Penalty: \$874.**

17. In the Matter of Judy Umeck for Saugus School Board 2013, Judy Umeck, and Bruce Umeck; FPPC No. 15/220 (Streamline Settlement). Staff: Commission Counsel Michael W. Hamilton and Staff Service Analyst Dominika Wojenska. Judy Umeck was a successful candidate for Saugus School Board in 2013. Umeck and the treasurer failed to timely file four semiannual campaign statements covering the reporting periods of January 1, 2014 through December 31, 2014 and July 1, 2015 through June 30, 2016, in violation of Government Code Section 84200 (4 counts). **Total Proposed Penalty: \$800.**

18. In the Matter of Greg Tanaka for Palo Alto City Council 2016, Greg Tanaka, and Jeff Justice; FPPC No. 17/00117 (Streamline Settlement). Staff: Chief of Enforcement Galena West and Political Reform Consultant Teri Rindahl. Greg Tanaka successfully ran for Palo Alto City Council in the November 8, 2016 General Election. Jeff Justice is the Committee's treasurer. The Committee, Tanaka, and Justice failed to timely file two 24-Hour Reports, in violation of Government Code Section 84203 (2 counts); and failed to disclose occupation and employer information on the semiannual statement covering the reporting period of July 1, 2016 through December 31, 2016, in violation of Government Code Section 84211 (1 count). **Total Proposed Penalty: \$733.**

- 19. In the Matter of Friends of Sheila Jordan, Sheila Jordan, and Kim Boston; FPPC No. 16/0308 (Streamline Settlement).** Staff: Commission Counsel Theresa Gilbertson and Staff Services Analyst Dominika Wojenska. Sheila Jordan served as the Alameda County Superintendent of Schools for 16 years. Friends of Sheila Jordan was her candidate-controlled committee. Kim Boston was the Committee's treasurer. The Committee, Jordan, and Boston failed to timely file three semiannual campaign statements covering the reporting period of July 1, 2014 through December 31, 2015, in violation of Government Code Section 84200 (3 counts). **Total Proposed Penalty: \$629.**
- 20. In the Matter of Committee to Elect Michael Wilson Indio City Council 2014, Michael H. Wilson, and Gian D. Neigel; FPPC No. 16/19894 (Streamline Settlement).** Staff: Commission Counsel Christopher Burton and Special Investigator Garrett Micheels. Michael H. Wilson is a current member of the Indio City Council. Committee to Elect Michael Wilson City Council 2014 is his candidate-controlled committee. Gina D. Neigel is the Committee's treasurer. The Committee, Wilson, and Neigel failed to timely file one 24-Hour Report for an independent expenditure, in violation of Government Code Section 84204; and failed to timely report subvendor payments on the Committee's campaign statement covering the reporting period of July 1, 2016 through December 31, 2016, in violation of Government Code Section 84211 (1 count). **Total Proposed Penalty: \$483.**
- 21. In the Matter of Committee to Elect Rafael Garcia for Salinas Valley Memorial Hospital Board 2012 District 3, Rafael Garcia, and Nathalia Carrillo; FPPC No. 16/320 (Streamline Settlement).** Staff: Chief of Enforcement Galena West and Staff Services Analyst Dominika Wojenska. Rafael Garcia was a successful candidate for the Salinas Valley Memorial Healthcare System Board in the November 6, 2012 General Election. Committee to Elect Rafael Garcia for Salinas Valley Memorial Hospital Board 2012 District 3 is his candidate-controlled committee. Nathalia Carrillo is the Committee's treasurer. The Committee, Garcia, and Carrillo failed to timely file one semiannual campaign statement for the reporting period of October 26, 2012 through December 31, 2012, in violation of Government Code Section 84200 (1 count). **Total Proposed Penalty: \$268.**
- 22. In the Matter of Yes on Measure UUT and Amy Putnam; FPPC No. 16/382 (Streamline Settlement).** Staff: Chief of Enforcement Galena West and Political Reform Consultant Teri Rindahl. Yes on UUT was a local primarily formed ballot measure committee. Amy Putnam was the Committee's treasurer. The Committee and Putnam failed to timely file one pre-election campaign statement covering in the reporting period

of January 1, 2014 through March 33, 2014, in violation of Government Code Section 84200.5 (1 count). **Total Proposed Penalty: \$241.**

23. In the Matter of Calaveras Residents Against Commercial Marijuana, Susan Morse, and Vicky Reinke; FPPC No. 16/19770 (Streamline Settlement). Staff: Chief of Enforcement Galena West, Special Investigator Paul Rasey, and Political Reform Consultant Chloe Hackert. Calaveras Residents Against Commercial Marijuana is a county general purpose committee. Susan Morse is the Committee's treasurer. Vicky Reinke is the Committee's principal officer. The Committee, Morse, and Reinke failed to timely file an amendment to the Committee's Statement of Organization within 10 days of qualifying as a committee and failed to disclose the Committee's status as primarily formed to oppose Measure D on the November 8, 2016 General Election ballot in Calaveras County, in violation of Government Code Section 84101 (1 count). **Total Proposed Penalty: \$200.**

Campaign Non-Reporter

24. In the Matter of ReElect Debi Davis for City Council 2016, Debi Davis, and Beverly Silva; FPPC No. 16/20112 (Streamline Settlement). Staff: Commission Counsel Christopher Burton and Special Investigator Jay Martin. Debi Davis was a successful candidate for the Santa Clara City Council in the November 8, 2016 General Election. ReElect Debi Davis for City Council 2016 was her candidate-controlled committee. Beverly Silva was the Committee's treasurer. The Committee, Davis, and Silva failed to timely report accrued expenses associated with services provided by Foo Robertson Marketing on three pre-election campaign statements covering the reporting periods of July 1, 2016 through October 28, 2016, in violation of Government Code Section 84211 (3 counts). **Total Proposed Penalty: \$634.**

25. In the Matter of Silva for Council 2016, Tino Silva, and Dennis Azevedo; FPPC No. 16/20117 (Streamline Settlement). Staff: Commission Counsel Christopher Burton and Special Investigator Jay Martin. Tino Silva was a candidate for the Santa Clara City Council in the November 8, 2016 General Election. Silva for Council 2016 was his candidate-controlled committee. Dennis Azevedo was the Committee's treasurer. The Committee, Silva, and Azevedo failed to timely report accrued expenses associated with services provided by Foo Robertson Marketing on three pre-election campaign statements covering the reporting period of July 1, 2016 through October 28, 2016, in violation of Government Code Section 84211 (3 counts). **Total Proposed Penalty: \$634.**

26. In the Matter of Watanabe for City Council 2016, Kathy Watanabe, and Karl Watanabe; FPPC No. 16/20113 (Streamline Settlement). Staff: Commission Counsel Christopher Burton and Special Investigator Jay Martin. Kathy Watanabe was a successful candidate for the Santa Clara City Council in the November 8, 2016 General

Election. Watanabe for City Council 2016 was her candidate-controlled committee. Karl Watanabe was the treasurer of the Committee. The Committee, Kathy Watanabe, and Karl Watanabe failed to timely report accrued expenses associated with services provided by Foo Robertson Marketing on three pre-election campaign statements covering the reporting period of July 1, 2016 through October 28, 2016, in violation of Government Code Section 84211 (3 counts). **Total Proposed Penalty: \$614.**

27. In the Matter of Sheryl Turner and Sheryl Turner for Pasadena School Board 2015; FPPC No. 15/1984 (Streamline Settlement). Staff: Commission Counsel Michael W. Hamilton, Special Investigator, Ann Flaherty and Staff Service Analyst Kathryn Trumbly. Sheryl Turner was an unsuccessful candidate for the Pasadena School Board in 2015. The Committee and Turner failed to timely report expenditures on the pre-election campaign statement covering the reporting period of February 22, 2015 through June 30, 2015, in violation of Government Code Section 84211 (1 count). **Total Proposed Penalty: \$256.**

Statement of Economic Interests Non-Filer

28. In the Matter of Bret Mackey; FPPC No. 16/19995 (Streamline Settlement). Staff: Commission Counsel Michael W. Hamilton and Staff Service Analyst Kathryn Trumbly. Bret Mackey, a Staff Service Analyst for California Correctional Health Care Services, failed to timely file his Assuming Office Statement of Economic Interest, in violation of Government Code Section 87300 (1 count). **Total Proposed Penalty: \$600.**

29. In the Matter of Colton Bear; FPPC No. 17/195 (Streamline Settlement). Staff: Chief of Enforcement Galena West and Enforcement Intake Manager Tara Stock. Colton Bear, a Director for the Hornbrook Fire District, failed to timely file an Assuming Office Statement of Economic Interests and a 2016 Annual Statement of Economic Interests, in violation of Government Code Section 87300 (2 counts). **Total Proposed Penalty: \$600.**

30. In the Matter of Michael Guth; FPPC No. 17/713 (Streamline Settlement). Staff: Chief of Enforcement Galena West and Political Reform Consultant Chloe Hackert. Michael Guth, as a Planning Commissioner for the County of Santa Cruz, failed to timely file a 2016 Annual Statement of Economic Interests, in violation of Government Code Section 87203 (1 count). **Total Proposed Penalty: \$200.**

31. In the Matter of Richard Clark; FPPC No. 17/711 (Streamline Settlement). Staff: Chief of Enforcement Galena West and Political Reform Consultant Chloe Hackert. Richard Clark, as a Planning Commissioner of the County of Contra Costa, failed to timely file a 2016 Annual Statement of Economic Interests, in violation of Government Code Section 87203 (1 count). **Total Proposed Penalty: \$200.**

- 32. In the Matter of Sheri McBee; FPPC No. 17/671 (Streamline Settlement).** Staff: Chief of Enforcement Galena West and Enforcement Intake Manager Tara Stock. Sheri McBee, a Director for the Firebaugh Canal Water District, failed to timely file a 2016 Annual Statement of Economic Interests, in violation of Government Code Section 87300 (1 count). **Total Proposed Penalty: \$200.**
- 33. In the Matter of Joe Sturdivant; FPPC No. 17/641 (Streamline Settlement).** Staff: Chief of Enforcement Galena West and Enforcement Intake Manager Tara Stock. Joe Sturdivant, an Associate Park and Recreation Specialist for the California Parks and Recreation Department, failed to timely file a 2016 Annual Statement of Economic Interests, in violation of Government Code Section 87300 (1 count). **Total Proposed Penalty: \$200.**
- 34. In the Matter of Frank Padilla; FPPC No. 17/640 (Streamline Settlement).** Staff: Chief of Enforcement Galena West and Enforcement Intake Manager Tara Stock. Frank Padilla, a Park and Recreation Specialist for the California Parks and Recreation Department, failed to timely file a 2016 Annual Statement of Economic Interests, in violation of Government Code Section 87300 (1 count). **Total Proposed Penalty: \$200.**
- 35. In the Matter of Anne Millington; FPPC No. 17/637 (Streamline Settlement).** Staff: Chief of Enforcement Galena West and Enforcement Intake Manager Tara Stock. Anne Millington, a Research Program Specialist II for the California Parks and Recreation Department, failed to timely file a 2016 Annual Statement of Economic Interests, in violation of Government Code Section 87300 (1 count). **Total Proposed Penalty: \$200.**
- 36. In the Matter of Cassie Thomas; FPPC No. 16/246 (Streamline Settlement).** Staff: Chief of Enforcement Galena West and Political Reform Consultant Chloe Hackert. Cassie Thomas, a former member of the Workforce Investment Board and/or Youth Council, failed to timely file a 2014 Annual Statement of Economic Interests, in violation of Government Code Section 87300 (1 count). **Total Proposed Penalty: \$200.**
- 37. In the Matter of Katherine Kasolas-Jacobson; FPPC No. 16/016 (Streamline Settlement).** Staff: Commission Counsel Ruth Yang, Political Reform Consultant Teri Rindahl, and Law Clerk Benjamin Tagert. Katherine Kasolas-Jacobson, a member of the Orchard School District Board of Trustees in the County of Santa Clara, failed to timely file a 2014 Annual Statement of Economic Interests, in violation of Government Code Section 87300 (1 count). **Total Proposed Penalty: \$200.**

Statement of Economic Interest Non-Reporter

38. In the Matter of Richard Hernandez; FPPC No. 15/524 (Streamline Settlement).

Staff: Senior Commission Counsel Angela Brereton. Richard Hernandez, a city councilmember for the City of Avalon, failed to timely disclose a source of income on his 2012, 2013, and 2014 Annual Statements of Economic Interests, in violation of Government Code Section 87207. **Total Proposed Penalty: \$300.**

39. In the Matter of Lori Cowan; FPPC No. 17/626 (Streamline Settlement). Staff: Chief of Enforcement Galena West and Political Reform Consultant Chloe Hackert. Lori Cowan, as Supervisor of District 2 of Del Norte County, failed to disclose her business positions as a Manager of North Coast Ocean Sports & Grill and as a Realtor for North Woods Realty and spousal income on her Assuming Office Statement of Economic Interests, in violation of Government Code Section 87207 (1 count). **Total Proposed Penalty: \$100.**

Closed Session Item 40

40. Pending Litigation (Gov. Code § 11126(e)(1))

Howard Jarvis Taxpayers Association v. Edmund Brown, et al., Sacramento Superior Court Case No: 34-2016-80002512. Staff: General Counsel Jack Woodside and Commission Counsel John Feser. Discussion of pending litigation regarding possible appeal of superior court's ruling granting petitioner's writ of mandate.

Chair Remke: Okay, the next item is item 40, which is a closed session item regarding pending litigation in the Howard Jarvis Taxpayer Association matter vs. Brown and I do understand that we have some members who would like to make a public comment before we go into closed session, so let's go ahead and have that before we go into closed session.

Nicolas Heidorn: Thank you, Chair, members. Nicolas Heidorn with California Common Cause. Common Cause is the sponsor of SB 1107, which is the bill underlying the litigation in Howard Jarvis Taxpayer Association vs. FPPC. Just wanted to show up to express our support for the FPPC appealing the decision. Hopefully (inaudible) the FPPC and the AG's underlying arguments and the lower court case. We think the decision was erroneous and it's one that's ripe for appeal. Also just want to mention that 80% of Americans in a recent poll think that money has too much of an influence in our political campaigns. That's 80% of Republicans, Democrats, Independents. It's across the board. Further, 85% Americans want to see fundamental change in our campaign finance system. We think that's what SB 1107 does and we think that's why you saw a two thirds bipartisan vote to get this bill passed. Also think that's why you saw over 40 organizations, a broad cross section of California, including business and labor, including UFCW, Los Angeles Central Labor Council, environmental groups, civil rights groups, as well as local governments that currently are prevented from doing public financing like Alameda County, Contra Costa County come

forward in support, so just in summary, we think this is a very important bill. It's one that we urge and hope to support the FPPC appealing. Thank you.

Chair Remke: Thank you. Any additional public -- oh, you have a question for him?

Commissioner Hatch: Yes.

Chair Remke: Excuse me, Nicolas.

Commissioner Hatch: Before you leave -- thank you.

Nicolas Heidorn: Hi, Commissioner.

Commissioner Hatch: On the merits of your legislation, I personally was very supportive. I think it was a great idea. Troubled that, you know, that the Superior Court didn't do what I would consider to be the right thing, but I'm not a lawyer, so I can have those fantasies or errors of understanding. I'm concerned that while this decision is important, it's not one that directly attacks the local ordinance that would implement this, which is probably where the rubber really meets the road, and I would ask you, do you think that you're better off or worse off to reach that point if we go ahead and appeal this and lose?

Nicolas Heidorn: So if we don't appeal the decision, let it stand, that would mean the local governments, separate charter cities, would not be able to do campaign public financing. If we appeal the decision and lose, it's essentially the same outcome. Charter cities would still maintain their exemption, but their local governments wouldn't, so from that perspective, we feel strongly the decision should be appealed to give counties like Contra Costa, Alameda, special districts and cities supporting the bills that want to be able to be responsive to their constituents not be able to do this.

Commissioner Hatch: Please correct me if I'm wrong. Isn't a Superior Court decision can be ignored if it's not -- they're not direct parties, so like the city of, say, Santa Ana could adopt a local ordinance if we stop this process right now and they would be able to do that and of course they would be challenged in a separate litigation? Am I not right?

Nicolas Heidorn: Potentially true. I don't know exactly how it would work in terms of the court having voided it, so I'm not sure what the statute would read like based on that, but given that if this case were to stand, we think most local governments would be chilled from even attempting it, so for that reason, in addition we'd want to see the decision appealed.

Commissioner Hatch: Thank you.

Chair Remke: Additional public comment on item 40?

Emily Rusch: Emily Rusch, Executive Director of the California Public Interest Research Group, CALPIRG, and we support SB 1107 and associate my comments with Nicolas's

before.

Chair Remke: Thank you.

Helen Hutchison: I'm Helen Hutchison, the president of League of Women Voters of California, and we also strongly support SB 1107 and would like to see the lawsuit go forward.

Chair Remke: Thank you. Any additional public comment before we go into closed session? Seeing or hearing none, we will go off the record.

Colleen Beamish: Good morning. I'm Colleen Beamish, Chief of Staff to Senator Ben Allen. He was not able to attend the hearing today, although I know he would've liked to be here. He asked me to convey that he would urge the Commission to file an appeal on the recent court decision involving his legislation, Senate Bill 1107. He feels that it's vitally necessary to move that appeal forward. Thank you.

Chair Remke: Thank you. Okay, final call. Seeing or hearing none, we're going to go off the record and go into closed session.

Public Meeting concluded at 10:38am.

Public Meeting reconvened at 11:19am.

Chair Remke: Okay, just as to item 40, I will report out of closed session that the Commission has voted to appeal the Superior Court's decision.

General Items 41-43

41. Adoption of Amendment to Regulation 18351. Staff: Brian Lau, Senior Counsel, Legal Division. Staff proposes to amend Regulation 18351 to update the positions and disclosure categories in the FPPC's conflict of interest code.

Staff Memo - Proposed Amendments 18351

Statement of Reasons

Regulation 18351

Chair Remke: So we have one more item and then we'll try to move quickly for all you patient people. Item 41 is the adoption of amendment to regulation 18351 regarding the agency's code, so Brian.

Brian Lau, Commission Counsel: Hello, Commissioners. Brian Lau, Commission Counsel with the legal division here to introduce proposed amendments to regulation 18351, which is

the agency's conflict of interest code. The Political Reform Act requires every agency to adopt a conflict of interest code that designates each position with the agency in a decision making capacity that may foreseeably affect a financial interest and identify the types of interest that each designated position are required to report. The Act requires the FPPC to reviews its code every two years and the code must be amended whenever new positions are added or the duties of an existing positions are changed. The FPPC's conflict of interest code was last amended in 2016. Each of the amendments to the code have been described in the statement of reasons attached to the memorandum to the Commission. The most significant of these amendments stem from the reorganization of the technical assistant division into the external affairs and education division. Under this reorganization, the information officer and legislative coordinator have been moved into the external affairs and education division, along with the technical assistance chief position and staff specializing in phone assistant and public outreach. Statements of economic interest review have been moved into the administrative and technical division to better coordinate with the implementation of electronic filing and third, technical assistant chief and staff specializing in email assistance and conflict of interest code review have been moved into the legal division, as these duties are coordinated with legal attorneys and often reviewed by legal attorneys. I should note that there was a typo on page two of the code. There's a number three for the position of external affairs. That was a deleted position, so the three should be shown in strikeout as well.

Chair Remke: Slow down on that part. Which page of the proposed code are you looking at?

Brian Lau, Commission Counsel: Page two of the code.

Chair Remke: Under which division?

Brian Lau, Commission Counsel: About four lines down.

Chair Remke: Oh, you just say because the position actually was crossed out. It's the --

Brian Lau, Commission Counsel: Right.

Chair Remke: -- fourth listed position. Oh, I think you're looking at something else. No, no, I think you're looking at -- so we've deleted the external affairs position and so we should've just crossed out three.

Brian Lau, Commission Counsel: The three should've been crossed out as well, so it's just a minor typo that will be fixed before it goes over for publication and approval. With this, I propose the adoption of 18351 and I can answer any questions we have -- the commissioners have regarding any of the specific changes or --

Chair Remke: Okay, any questions from the commissioners? Any public -- oh, sorry.

Commissioner Hatch: Didn't we get a communication on this, somebody?

Chair Remke: Public comment. We do have a public comment letter that's been submitted and then if you don't have -- I will ask if there's any public comment. Any public comment?

Cynthia Jones: Thank you. My name is Cynthia Jones. I'm a political reform consultant for the FPPC for the last 18 years. Appreciate your willingness to hear me and more importantly, I want to thank you for your interest and the fairness of the FPPC and its regulated community and staff. The proposed code and reorg limits, segregates, and classify employees in ways which tends to deprive employment opportunities and other adversely effects. Failure to open and recruit vacancies, hires not selected on merits but by patronage, Equal Pay Act violations, favoritism, workforce equality, preferential treatment and work assignments and abuse of authority are common concerns and common practices made possible by the lack of accountability and transparency in the overall administration of HR services. Human resource are the people who work exist to serve the needs of the people. It is the first line of defense when faced with employment discrimination, workplace bullying and harassment, and a slew of other work related issues. HR is out of compliance with past practices and other fair treatment of personal rules and the master agreement.

Commissioner Hatch: I hope your job won't be in jeopardy over that.

Chair Remke: Of course it wouldn't be, but --

Commissioner Hatch: Madam Chair?

Chair Remke: Questions? Any questions?

Commissioner Hatch: Oh, I'm sorry.

Chair Remke: Do you have a question, Commissioner Hatch?

Commissioner Hatch: Procedurally.

Chair Remke: Okay.

Commissioner Hatch: There's obviously some open issues that could be resolved with a little bit of time. Maybe we should just put this over.

Chair Remke: Ms. Peth, you want to respond to that?

Executive Director Erin Peth: Sure, I'd be happy to. Excuse me, so to your point, Commissioner Hatch, we're aware of the concerns that Ms. Jones has raised and obviously there are confidential personnel issues being -- that are at issue here, but our position is that those concerns are being addressed under the appropriate methodology in which we do so and that they are not really relevant to the adoption of the Conflict of Interest Code which Mr. Lau obviously presented in terms of -- the Conflict of Interest Code represents the -- it is a document based on existing organizational structure that we have put in place and outlines the disclosure categories, so that is what it is and I think that that can be adopted

and while we continue to work through the issues that Ms. Jones has raised.

Commissioner Hatch: Isn't it possible some of these things that she's raised here today might end up before the Commission itself if they can't be resolved otherwise?

Executive Director Erin Peth: I mean, I -- there's a lot of elements to what's been discussed. It may be possible, but I think some of those are going to be resolved potentially through other avenues, so --

Commissioner Hatch: Some.

Executive Director Erin Peth: Right, but even if something needs to come back before the Commission, it's not relevant to the adoption of the Conflict of Interest Code.

Commissioner Hatch: As a longtime representative of working people, I do appreciate leverage and working people often don't have much leverage, so if it's appropriate, Madam Chair, I'd like to make a motion.

Chair Remke: Let's have other comments or questions before a motion. Go ahead, Commissioner Audero.

Commissioner Audero: Thank you. So being a practitioner of employment law, I hear many things in this and I actually wasn't able to write down all of the concerns that you have, but I'm trying to -- so clearly there are some concerns about discrimination, harassment, bullying of you as an employee here. Is that correct? I mean, you stopped nodding your head, so I'm sure if I misstated that.

Cynthia Jones: The statements that are made not just affect me. It's not a personal issue. I represent the staff.

Commissioner Audero: Okay, so assuming that you represent the staff and I, you know, I don't want to get into that right now, but that they're -- it seems like there's two things happening here. There are some concerns about discrimination, harassment, bullying, workplace concerns, wage and hour issues, pay equity -- I tried to remember everything you said. I'm sorry; I didn't write everything down -- which is one set of issues, which is not an appropriate set of issues for us to deal with unless somehow those issues are related to the Conflict of Interest Code that -- hold on -- that is before us for a vote right now, and I don't understand the connection that you're making.

Cynthia Jones: It is the reorganization of that code that I'm tying this to, because that is the --

Commissioner Audero: How? I mean, how -- what are you saying exactly, that it shouldn't have been reorganized why?

Cynthia Jones: It's reorganized to limit -- to classify and segregate employees in ways that deprives employment opportunities.

Commissioner Audero: But what does that have to do with whether a particular position is required to adhere to the conflict of interest rules?

Cynthia Jones: Well, basically, the reorganization doesn't go into the details of those positions that duties have been changed. They don't really specify the disproportionate [sic] duties of the employees, but --

Commissioner Audero: Are you finished? I don't want to interrupt --

Cynthia Jones: Yes.

Commissioner Audero: -- you. Okay, so explain to me -- so what we're doing here is, we are adopting a regulation that categorizes positions into an assigned disclosure category, right?

Cynthia Jones: Correct.

Commissioner Audero: And so basically, as I'm reading this, it says, "The Executive Director is in assigned disclosure category one," and then it goes on and on, right, and the Executive Fellow is in assigned disclosure category three. How is their disclosure category and the various disclosure categories here -- what does that have to do with your discrimination and harassment and retaliation concerns?

Cynthia Jones: Because basically, it is the technical assistant division that's been divided into what they call this reorganization and it basically separates classifications and leaves the bulk of the work with very few and relieves others of the full tasks of the job, so it --

Commissioner Audero: But what does that have to do with the disclosure category of each position?

Cynthia Jones: The disclosure category remains unchanged, although the duties have been changed.

Commissioner Audero: But what does that have to do with whether a -- the only thing that's before us now, which is whether we approve this restructuring so that -- and the disclosure categories that follow?

Cynthia Jones: Well, basically the code itself, you know, has the language in it and like I said, it doesn't matter if you approve it or not, but I did want to bring to your attention that -- what it really does.

Chair Remke: Okay, Commissioner Hatch?

Commissioner Hatch: Buried in this document we're looking to approve or not, it shifts individuals from one department or segment of the organization and with that may change their individuals might be treated differently in terms of what level of disclosure that they would be required to do?

Cynthia Jones: That would be the case, yes.

Commissioner Hatch: So it's not just simply where -- it does affect individual people.

Chair Remke: Let me just clarify. Brian, did we change any categories of people as a result of the --

Brian Lau, Commission Counsel: We ultimately only have five categories. There's the highest level categories for the -- all division chiefs have full disclosure. All the lawyers and attorneys have full disclosure and then there's a disclosure category for enforcement and then the remainder of the decision making employees fall into category -- I believe it's category two or -- category three, which is essentially the same and that's a uniform category that's been in existence and is going to stay in existence, so no one's been moved from that category, the existing category that all non-enforcement staff fall into when they fall into a non-enforcement position or a non-procurement position, so --

Chair Remke: So I just want to clarify, so as a result of the reorganization --

Brian Lau, Commission Counsel: The duties have been compared and they fall --

Chair Remke: But again, to Commissioner Audero's point, the purpose of approving this for the disclosure category, those have not changed?

Brian Lau, Commission Counsel: Right.

Executive Director Erin Peth: I think a simpler way to say it is -- (clears throat) excuse me -- the position at issue is the political reform consultant position and although they now are in actually, three of our divisions, they all share the same disclosure category, which is category three, which was what they had previous, even to this adoption.

Commissioner Hatch: Follow up on my question. I notice that you divide groups and took part of a group and put it in this other division in more than one place and some people are into a newly created one and others are just -- you're saying that none of their -- none of them will have a change in their category of disclosure?

Executive Director Erin Peth: Correct. The political reform consultants report in disclosure category three and they did previously to this.

Commissioner Hatch: Nobody's going from four to three or vice versa?

Executive Director Erin Peth: Not for the positions that we're discussing.

Commissioner Hatch: Thank you.

Chair Remke: Commissioner Audero?

Commissioner Audero: Thank you. I don't think that -- with all due respect, Commissioner Hatch, I don't think that question matters here. I think what we have is, we have a restructuring that took place. You may have issues with the restructuring. I hear you, but

we have a restructuring that took place and we're not here to discuss the restructuring. We are here to discuss that what happened to the disclosure categories as a result of the disclosure, which -- sorry, of the restructure, which has nothing to do with the restructure. So I don't understand why we're having this discussion, I guess. I guess we needed to get to this point. We needed to hear what you had to say and kind of talk it through, but if your concern is with the restructure, this is not the right place or time for a discussion about that. What we are voting on is, a restructure has happened. Whether we agree with it or not, it doesn't matter, and as a result of that, we have to now fix the conflict of interest code. That's it, right? Thank you.

Cynthia Jones: Thank you.

Chair Remke: Thank you, Ms. Jones. Any additional public comment? Okay, is there a motion?

Commissioner Hatch: Yes, I have a motion to table. Is that debatable? Up or down?

Chair Remke: Is there a second?

Commissioner Audero: I have a question about it, because I don't understand the motion. We're going to table it to when?

Commissioner Hatch: I'm open on that. I would suggest to the following meeting. This is the October meeting.

Chair Remke: Is there a second on the motion? Okay, no second. Is there any -- That fails. Is there any additional motion?

Commissioner Hayward: I move approval.

Commissioner Audero: I second.

Ayes: Commissioners Audero, Hayward, and Chair Remke.

Nays: Commissioner Hatch.

The motion passed 3-1.

42. Executive Staff Reports.

Enforcement Division. Galena West, Enforcement Chief
Legal Division. Jack Woodside, General Counsel
External Affairs and Education. Courtney Miller, Manager
Legislative and External Affairs. Phillip Ung, Director

Chair Remke: Thanks, Brian. Okay, so we're going to move to executive staff reports and we're just going to jump right into legislation because people have been patiently waiting, so

let's get to that.

Phillip Ung, Legislative Director: Good morning, Commissioners. Phillip Ung, Legislative Director. At the table with me is Sukhi Brar, Senior Counsel for the Legal Division and Trish Mayer, Assistant Chief of the Legal Division. Before we get started for the big ticket item, for which I sold tickets -- no, I'm just kidding -- I wanted to update you on the status of the bills in the legislative report starting on page 14 of the executive report. As you know, the legislature has ended their first year session and so many of these bills are not in the place that were previously stated, and so for bill numbered 1, which is AB 249, it's now on the Governor's desk. I think it said that it was on the Senate floor. Skipping over to bill 5, 6, 8, 9, and 10 and 11, they're all on the Governor's desk, so essentially all the bills 5 through 11 minus seven are all on the Governor's desk. Number seven is not on the Governor's desk.

Chair Remke: Okay, so with that, I will start asking if the Commissioners want to ask question of Mr. Ung or would you prefer to go ahead and hear public comment first? Any questions before we begin public comment? Let me just say it that way.

Commissioner Hayward: Let's go with public comment.

Chair Remke: Any questions? Okay, then let's start with public comment. I believe a lot of you are here from the Clean Money Act; is that correct, and I know that you have a spokesperson and I also will note for the record that we received over 5,000 emails which have been stated for the record and those have also -- the identical one has been shared with the commissioners and has been posted, so I just want to acknowledge we all have that and not to cut anyone off, but I would have -- when it's his turn, Mr. Lange start and then anyone else who feels from the Clean Money they would like to come up and state their name and where they're from for the record, we'll do it that way, okay? Alright.

Commissioner Audero: Oh, hold on. Not okay. So I don't think it's appropriate to limit -- all these people have come here to speak with us and I don't think it's appropriate to limit them to their name and whatever else you said. What did you say?

Chair Remke: Where they're from, because again I'm just trying to avoid them having to say the same thing over and over and I know that Mr. Lange is their spokesperson and quite a sufficient leader, but we will open it up and everyone will be limited to two minutes, okay?

Commissioner Audero: No, no --

Chair Remke: that's --

Commissioner Audero: Hold on, hold on. This is not -- it is not appropriate to limit the speech of all the people who have come here without having done so through the way that we are allowed to do it, so we can't limit speech because we just don't feel like hearing it. We don't get to limit speech because it's duplicative. That's not how the law works. That's unconstitutional. We can have appropriate time place manner restrictions if we follow the

right procedures to get there, so before we go there, I would like to know what regulation we have passed that allows us to do that, because that's where the game starts. We have to pass a regulation through the Administrative Procedures Act to limit time place -- through time place manner and we have to give people an opportunity and they have to know through our notice that our public agenda that we are going to limit speech to time place manner and in this case, name and where they're from or two minutes or three minutes, or five minutes, or whatever it is that we're going to do, so unless we have the regulation that allows us to do this, I don't think we can, so I would suggest that instead, we appeal to the good people of California who have traveled all this way to say what they feel that they need to say and we're here to listen and, you know, I can change my flight. I don't know that you folks want to be here all day, but I certainly don't want to be part of a commission that silences all these people who have taken the time to travel to come talk to us.

Chair Remke: Okay, so I'm -- That's fine. Just to clarify, I'm not trying to silence; I'm trying to follow the normal practice which we have, which has been challenged and that is fine. That is fine. I do not intend to silence anyone and I guess we'll just see how this proceeds. Please, sir.

Commissioner Audero: Sit back, everyone.

Hugh Bower, Chief of Staff to Assembly Speaker Pro Tempore Kevin Mullen: I'll try to be brief. I will be brief. My name's Hugh Bower. I'm Chief of Staff to Assembly Speaker Pro Tempore Kevin Mullen, the author of AB 249, the DISCLOSE act. I'm sure you're all aware in recent years, California has seen campaign spending on ballot measures reach unprecedented levels. In fact, over a billion dollars was spent on ballot measures between 2012 and 2016. AB 249 will fundamentally change how campaign financing is disclosed in the State of California. We feel it's long overdue. The status quo allows donors to hide behind layers of misleading organization names, enabling campaigns to conceal their top funders. Additionally, campaigns can bury donor information in fine print that's flashed on TV ads, making it nearly impossible for voters to identify the true funders of campaign advertisements. Assemblyman Mullen, working with the Clean Money Campaign, in 2017 introduced AB 249 as a nonpartisan effort to provide more information to voters on both sides, all sides of the aisle. AB 249 will bring greater transparency to California, allowing voters the opportunity to make better informed decisions based upon honest information. If enacted, AB 249 will be the strongest law in the country relating to campaign finance. If AB 249 should fail, the status quo will continue, which to our mind is unacceptable. AB 249 is supported by the Clean Money Campaign, the League of Women Voters, Common Cause, and literally thousands of private individual Californians that feel passionate about this issue. Last Friday, with a strong bipartisan support, both houses of the legislature sent AB 249 to the Governor. It now awaits a signature. On behalf of Assembly Speaker Pro Tem Kevin Mullen, I respectfully request the Commission to vote to support AB 249. Thank you.

Chair Remke: Thank you, sir.

Bob Stern: Hello, good morning, Commissioners. My name is Bob Stern. I was your first general counsel from 1975 to 1983. I also was the -- one of the principal coauthors of the Political Reform Act and for 28 years, I was president of the Center for Governmental Studies, based in Los Angeles, where I'm based. A philosopher once said, "The perfect is the enemy of the good." What you have with AB 249 is not only good, but an excellent bill, but not a perfect bill. I learned a long time ago that perfection is usually not possible, especially when it comes to legislation that has to be approved by two thirds of the legislature. Even the Political Reform Act was not perfect, although I helped write it, and even though it was an initiative that only had to be approved by a handful of people during its drafts. That's why the Political Reform Act was one of the first initiatives to allow legislative amendments and that's why there's an FPPC to write regulations, opinions, advice letters to help interpret and make better legislation that's passed. I have to say during our first few months in 1975, we had meetings twice a week to deal with regulations. You won't have to have meetings twice a week to deal with this legislation. I don't think you'll have to have that many meetings, but we did because we were getting started. The FPPC is usually in the forefront of presenting and supporting legislation that improves campaign disclosure and this bill does that. It makes it far easier for the public to see who is backing ballot measures and candidates. Disclosure on ads is the best form of disclosure. It is what more of the public will use as opposed to having to go to a website to look up contributions. I understand change is always difficult, but California now leads the nation in disclosure, but it can always do better and this bill is better than what we have right now, so I urge you to support the bill, at least remain neutral, and then to work with the public, the regulated community, and other groups to make sure this bill accomplishes its goals for next year's election. Thanks so much.

Chair Remke: Thank you, Mr. Stern.

Trent Lange, California Clean Money Campaign: Hello, Commissioners. Trent Lange, president of the California Clean Money Campaign, the sponsor of the bill. First of all, I'd like to congratulate the Commission for its very strong and powerful and nation-leading work in terms of addressing the problems of dark money in politics when it comes to disclosures. I think that has been an inspiration for everybody and we really appreciate that. But we firmly believe and as you can see, lots of people and groups firmly believe, that online disclosure is not enough. We absolutely have to have disclosure where people see it. The vast majority of people don't go to the Secretary of State website. The vast majority of people who go to the Secretary of State website can't really find what they want to see even when they do go. People need to see it on political ads and that's what this bill has been about. You saw our letter of critique of the staff's position. I'm not going to go all the way into most of the details of that, but I would like to also thank the staff for working with us over the years on

this issue and I hope that -- I know that you will recognize that over last year's bill, we actually did take a number of amendments suggested by staff to improve the bill and address some of the concerns of it, though we were not able to accept all of them due to the legislative process. What is, I think, important first of all -- there are multiple issues that we have to address to get at the heart of true funders of campaigns. That's what people want to see, that's what the voters want to see, that's what polls want to see and that's what the overwhelming extraordinary response, I think, to this bill wants to see. There are a couple of aspects of the staff analysis that I just want to point out that we believe that it missed. For instance, there's a part of the staff analysis where it is concerned about language. In the language, it says that "earmarking must have express consent," and it is true that one of the paragraphs, 85704(b)(1), does address the cases where a contributor requests -- where a committee expressly requested the contributor to expressly consent to such use, and if that were the only provision of the earmarking -- new earmarking in the language, then we too would be concerned, but it is not the only provision of earmarking in the language. (b)(2) explicitly says, "The contribution was made subject to a condition or agreement with the contributor that all or portion would be used to make a contribution to another specifically identified committee, ballot measure, or candidate." That does not mention express consent. That means that you will be able to use that paragraph to go after the exact same sorts of cases that you're able to now, but crucially -- and this is a really important thing. Currently, section 85704 only deals with contribution earmarking for particular candidates. That's not enough. People care about ballot measures. People care about independent expenditures. People care about earmarking to specific committees. That's what this is about. And then the big ticket thing that I know that people have raised lots of -- has raised lots of questions and that is the new provision 85704 that says that "Dues, fees, assessments, and other payments made to a membership organization in amount less than \$500 per calendar year from a single source for the purpose of making contributions or expenditures shall not be considered earmarked." Staff has raised concerns about that. Some stakeholders and legislators raised concerns about that particular issue as being -- providing some sort of loophole or exclusion for membership organizations. We believe just the opposite about that fact, because what we want to get at, what we think the public wants to get at when it comes to earmarking is who the true funders are. When money is traced along -- that's the whole goal of this earmarking thing so that if money is filtered through multiple layers of committees in attempt to hide, in many cases, that the public gets the information at the end of the day in the final committee, especially on the ads, who the true funder is, and under current law, without having this exclusion which says "shall not be considered earmarked," there is actually a risk in current code that a membership organization could put an assessment onto all their members as essentially a mandatory thing, though they're allowed to opt out, but most don't, and then pass that large sum of money along and claim that that money was earmarked not from them the membership organization, but from the individual members, Mary and Joe and Bill and Bob, thousands upon thousands of them who each were

earmarked \$117, \$221, or whatever. That information is in our view -- and that's what would show up on the final committee if this exclusion was not in her. That's the only difference having this exclusion and not having this exclusion. We don't think it serves the public. We don't think it serves true disclosures to have those final committees show the names of all those individual thousands and thousands and thousands of members, be they union members or other membership organization members, instead of what people really care about and that is the name of the membership organization. That's the one that should be earmarked and shown on those ads. People, if they're interested in seeing the original members, they can go back to the original membership organization reports and see that information, so that's why -- I'll be happy to take any questions about that particular part, but I think that is actually a very important part of the bill. It was omitted from previous versions that had a much higher threshold of \$7,300. That was not understandable, but we think this is actually a benefit, both to membership organizations and to the public for showing true funders.

Commissioner Hatch: Thank you for that explanation. I was quite frankly concerned of various versions that didn't address that issue and this, as you pointed out earlier, this expands the kinds of things that would be subject now to this, whereas before it was just a narrow area, and organizations that give small amounts of money, you know, assessed of the members, you know, with their consent, is the counterbalance to the big dark money folks and if we were to hobble them in such a manner to force them to -- and everything they do provide lists of thousands of people and, you know, that little amount of money, it would take away the focus from the actual important thing is, what is the collective money being done with and what is that unifying organization, whether it be SEIU or firefighters or whatever. That's something the public can deal with and process, whether that's good or bad, and I commend you for doing that.

Trent Lange: Yes, absolutely, that is the purpose of it. People will still be able to see those individual members if they're interested by going to the membership organization's own reports, but what we believe is important -- we don't want to provide undue burdens to passing on thousands and thousands of things through layers of committees, but most importantly, it should be the membership organization that is earmarked and showing up in the final committees, being traced along and shown up on ads if there are ads that they're a top three funder for.

Commissioner Hatch: One question. Your view, as structured, if the membership organization sent money, say, to the party --

Trent Lange: Uh-huh.

Commissioner Hatch: -- to be earmarked for a particular candidate or cause, they're still subject to the same requirements that it be double disclosed?

Trent Lange: Absolutely, yes.

Commissioner Hatch: Thank you.

Trent Lange: Yes, the -- part of the point of that provision is to make sure that is the membership organization itself as an entity, that is the one that is considered earmarked and therefore subject to any contribution limits, any reporting requirements, et cetera. That is the purpose of it and that's what all the experts that we have had look at the bill agree with. That's why you have the support of the good government community behind this measure, as I think you'll see. So if there are no more questions on that particular provision, I'll just close basically. In short, this is -- California does have some of the best online disclosure laws in the country regarding dark money, but as you will receive testimony from many, many people and already have, that's not enough. The DISCLOSE Act will help California lead the nation in terms of online disclosure. As Bob Stern said, it is not perfect. We will certainly acknowledge that, but we believe it's a dramatic improvement. We've taken many efforts to balance it. I think that's part of the reason why, when you look at your public comments, first of all, this bill passed the legislature with overwhelming bipartisan support in both houses. Over 350 organizations endorsed it. Over 100,000 people signed petitions for this bill this year and then on your own comments, you'll have -- I know you have 11 letters representing 21 organizations and then of course those 5,300 individual Californians, so this - - I think you'll see this as extraordinary support for an extraordinarily important bill. We respectfully request that you not vote to oppose unless amended and that you in fact lead by actually supporting the bill, but at the very worst going neutral. Thank you.

Emily Rusch, Executive Director with CALPIRG: Emily Rusch, Executive Director with CALPIRG again and I'm also here today to ask you to support -- take a support position for AB 249. This bill has been seven years in the making. We support the latest version of it and we think it is a marked step forward for campaign disclosure, both in the way that the ads are -- the way the disclosure is on the ads, as well as the earmarking provisions. Thank you so much.

Nicolas Heidorn: Nicolas Heidorn with the California Common Cause. We're also urging a support position on this bill. The field poll, which unfortunately is no more, but a number of years ago did a poll asking voters how they felt about ballot measure disclosure and it was 85% felt there needed to be additional disclosure on ballot measures. We think it's important that people when they receive these ads have an understanding of who's behind it, because understanding the messenger can help you understand the message. Trying to explain there's strong bipartisan support for this measure. We endorse it and we hope you guys do as well. Thank you.

Robert Longer, Communications Workers of America, CWA District 9 California: Hi, Robert Longer with Communications Workers of America, CWA District 9, California. Behalf of our 50,000 members in California, we urge you to support AB 249. This strong

level of bipartisan support is shared by the labor community, certainly shared by our organization, but other colleagues within the California Labor Federation. They have agreed to work and were able to amend legislation that's amenable to labor that also puts us on par with the rest of the community that are funding these ads, notably the Chamber of Commerce and other business organizations. What we need here and what AB 249 will do is to provide for a level playing field for disclosure purposes, quite simply, who's paying for these ads and that it's clear and it's concise and that people can understand in a quick timeframe and easily digest that who is providing for the funding for these ads. It's pretty simple, actually. We don't need Citizens For a Greater California. We need to know was paid for by CWA or paid for by the Chamber of Commerce, and so I would urge you to reject your staff's recommendation to support this, but as Trent said, if you cannot do that, then to remain neutral. The citizens of California deserve better and I would appreciate your support. Thank you.

Helen Hutchison, President, League of Women Voters of California: Helen Hutchison, the president of the League of Women Voters of California, and we support AB 249 and urge that you also support it. We believe it would be a significant step forward in disclosure -- important disclosure for the California public. Thanks.

Alex Aslow, Maplight: Alex Aslow with Maplight (phonetic), a nonprofit that tracks money in politics. Current state laws are frankly insufficient to provide California voters with vital information about just who is behind ads and innocuous sounding names that obscure the funders' true identities leaves voters well short of the information they need to clearly assess an ad that informs their decision. Our research indicates that indeed on-ad disclosure of the true source of funders of an ad provides voters with valuable information that helps them evaluate those political messages. We urge you to please support this important legislation that will strengthen democracy in California. Thank you.

Kristin Shannon: Good morning, Commissioners. Thank you for your excellent work over the years. My name is Kristin Shannon. I'm a native Californian and a registered California voter. Today, however, I'm here to bring a message from Ohio, where we have launched a ballot initiative based on the last decade of work here that's resulted in 249 SB. We've launched an open Ohio dot solutions organization to accomplish the same goals as the California DISCLOSE Act. People outside this room are watching. California is a vital model for other states and Ohio is the next state to take up the challenge to be -- to enact rules to reduce the impact of dark money in politics. While we cannot quickly reverse Citizens United nor instantly end gerrymandering, we can act state by state to open up truth in political advertising. The science of manipulation in political advertising is far too precise. Voters need to know who's writing the checks. It's time to reduce the impact of dark money in politics and that's why there's national attention on what's happening in this room today. I'd like to thank everyone in the room for all the work that they've done to open up truth in

advertising. The rest of the nation is waiting to see what happens here. Thank you.

Shane McLeod: Good afternoon, Commissioners and Chairperson Remke. My name is Shane McLeod. I'm a former public school teacher in central Los Angeles with over 10 years of full time classroom experience, former school board member of Santa Monica Malibu Unified School District, and most recently I served as the campaign manager to Voter's Right to Know. I'm here representing Money Out, Voters In. MOVI is an organization of democracy advocates dedicated to ending corporate rule and promoting civic engagement. Before us today is an opportunity to create the best disclosure law in the country. As you know, this effort has been spearheaded by the California Clean Money Campaign and has been supported by many organizations dedicated to improving our democracy, including MOVI and is strongly supported by hundreds of thousands of Californians who want to end dark money and evaluate public -- and elevate public awareness in political spending. This has been a seven year struggle. Today you have the opportunity to support this struggle by supporting AB 249 and encouraging the Governor to sign it into law. This is a grassroots movement. The years long campaign for the California DISCLOSE Act has been powered by the people of California, who have refused to take no for an answer and who have continued to show up at the capitol, make phone calls, send emails, come to committee meetings like this and sign petitions. Over 100,000 Californians signed the current petition in support of AB 249. While Californians have different ideas about whose money is tilting the scales in our elections, we broadly agree that special interests are the major players who are both shielded and masked, who unfairly operate under the cover of anonymity and who are the politically powerful organizations who determine outcomes in our elections and in our policies. We reject the Commissioner's assertion that the California DISCLOSE Act adds complexity without commensurate benefit to our elections. This is not complex. The political influencers will adjust to the reporting regulations. The benefits are huge, one being a more informed electorate, the other being -- the other benefit is sunlight on political spending, and as we know, sunlight is the best disinfectant. The California DISCLOSE Act will be the clearest and most unambiguous tool available to the voters of California to determine whose interests will be served by yes or no vote on ballot measures. We would urge you to -- not to overlook this particular moment as you make recommendations to the Governor. Please do not let the great and possibly unattainable be the enemy of good reform. This is good reform. Unregulated dark money is what got us here. We ask you to support this measure or at the very least stay neutral and allow California to improve our transparency and disclosure laws. Thank you.

Gordon Miller: Hi. My name is Gordon Miller. I'm from Walnut Creek. I'm with the California Alliance For Retired Americans. We are California's largest grassroots single -- excuse me. We're California's largest grassroots senior advocacy organization. We have approximately a million people in our affiliate organizations. We proudly endorse AB 249. It will be good to see California take the lead in knowing who is really behind Californians

For Truth, Justice, the American Way and Lower Taxes. Thank you.

Michael Karsh: My name is Michael Karsh. I'm from Martinez. I'm with Move to Amend and I urge you to support AB 249 so that it can be clear to voters who's funding the -- who are the top three funders of political ads so that they can decide whether or not they want to believe them, so please strongly support AB 249.

Peter Lino: Good afternoon. My name's Peter Lino (phonetic). I'm from Oakhurst, California, down where the wildfires are finally settling down a bit, and I'm here as a past candidate for public office on both local and federal level to appreciate your comments earlier today about trying to keep that threshold of complexity low so that people are encouraged to come up from the grassroots and run for office. I hope to be back and successful in the future, but I want to ask you to support AB 249. It really is key legislation. I got and read my fat little booklet from my county clerk when I ran for office and filed and I would love to have a few additional pages that assured me that if there were ads being run in the campaigns that I was active in, that people would know who was paying for those ads. I would welcome that complexity. Thank you very much.

Pam Mirabella: I'm Pam Mirabella. I live in El Cerrito, California. I am a former Contra Costa County Board of Education trustee for the past 28 years. I just lost my election last election. First of all, you know, democracy equals transparency. I have worked on legislation for so many years with California School Boards Association, our own association for the county boards, and I have watched the process, and I have watched 17 ballots last year and I want the public to know who's funding them, the pros and cons. This is a bipartisan. My position was nonpartisan, but what I want to tell you even in west Contra Costa County, that I represented, and that includes Richmond and San Pablo and all those good cities, we need transparency even on local school board races. I want you to know last time, \$681,000 was spent on two candidates to get a third person on the board from the charters. I want you to know that there's not even transparency when I filed my 460 from the person who ran against me. There's something wrong with the system. Yeah, I can file a complaint, but I want people when they see the flier Education Matters to know who's funding that and then they have another flier for PTA, which is PT -- Teachers Parents Alliance. Who are they? I want the public to know who they are. So please send the message to Gov. Brown very clearly that we need to pass AB 249. Thank you.

Rita Xavier: Hello. I'm Rita Xavier from San Pablo, Contra Costa County. I'm an Assembly District 15 delegate to the California Democratic Party and as you probably know, the Democratic Party endorsed this AB 249. Also, I'm an alternate for my senator in the county Democratic Party and she endorsed AB 249 and voted for it, so I urge you to support this measure. Thanks.

C.T. Webber: Good morning. My name is C.T. Webber. I'm the legislative committee chair for the Peace and Freedom Party of California. For full disclosure, I should mention that

Peace and Freedom Party opposed the creation of the Political Reform Act back in 1974, and the reason that we were opposed to it is because of the -- what we felt was bureaucracy interfering with small candidates who did not have the money to comply with all the bureaucratic procedures that were put forward. We're not talking about that now. We're talking about people with big money that can afford to handle these things, which is a different category and we fully support and have supported for years the Political Reform Act of -- excuse me, we are now supporting AB 249. We hope you'll vote for it. Thank you very much.

Lawrence Abbot: Lawrence Abbot, San Leandro. I'm with Indivisible East Bay, Indivisible Berkeley, Indivisible San Francisco, Our Revolution, and Move to Amend East Bay affiliate group and I'm a Teamster delegate to the Alameda Labor Council. Everybody I know, everybody I work with wants this as a step in the right direction. Please support it.

Mary Linten: Good afternoon. Thank you all for your attention. My name's Mary Linten, I'm from San Ramon, California, and I strongly support your taking a position of strong support for this bill. I want to say one or two things. I think people need clear disclosure and when we talk about the complexity in this bill, the complexity is not caused by the citizen opening their mailbox; it's caused by whoever it is that wants to hide their identity when they're paying for these ads, so bear that in mind when you think about complexity. I held a CPA license my entire career, worked in big business, small business, and government sectors, so I understand complexity and bureaucracy. I'm very sympathetic, but democracy is worth it. Please support the bill. Thank you so much.

Brad Tooby: Hi, my name is Brad Tooby (phonetic) and over the years, I've -- I'm from San Ramon, California and over the years I've come to the conclusion, you know, that big money, dark money, secret money has been diluting our democracy. My neighbors and friends, when they get their -- when they see political ads, they don't know what to believe anymore and too many people are no longer voting because they believe that it doesn't matter because they believe that candidates or these fliers are misrepresenting statements of fact, and so my opinion is that the top funders, if they're, you know, when their top funder's money is disclosed in political ads, it will help strengthen our democracy. People will be able to see where that money's coming from to know if it's from Chevron, a billionaire, a union; it doesn't matter, so information is critical and having that on the ads is what the people are asking for, so I'm hoping that -- I'm asking everybody to do the right thing and support this bill. Thank you.

Dennis Pendleton: Good afternoon. I'm Dennis Pendleton, a registered voter from Davis, and I appreciate the opportunity to speak with you. I urge your support of this bill.

Barbara Anders: Hello, my name is Barbara Anders and I'm a retired teacher from Watsonville, California and I have the two minute version and I have the 15 second version, so I call it the 15 second version. You all look like normal folks. I feel -- I feel your stress,

actually, and I applaud your work. You do very good work. But you have an extraordinary challenge and responsibility to reengage the entire country, really, politically because as California goes, so goes the nation. And Ohio will be the next. The citizens of California and the country are clamoring for transparency and AB 249 offers it, and it has an unprecedented bilateral support, so that should be easy for you, an easy excuse to go ahead and recommend it to the Governor. The complexities that the Commission's analysis has alluded to, there's been some talk about complexities. You know, we live in a complex time right now. This was not a hastily written, impulsively written act. It's been long in the coming and given the sway that this Commission has with the Governor, I urge each one of you to find the integrity and the strength of character to recommend it to him in its entirety without amendment. Thank you very much.

Carla Yoshikawa: My name is Carla Kincaid-Yoshikawa from San Francisco. I've been working on this for going on six years and there are people in this room who were here when I started, so we dedicated our time to doing this because deceptive ads plus hidden funders does not equal fair political practices, and that equation is corroding our politics and our faith in our government. We have to know who's behind those ads, who is going to put down hard money to convince us to vote a certain way in order to assess what does that really mean? What is it really about? So please support this.

Judy Steele: Hi. I'm Judy Steele from Clovis, California and I'm here representing the Fresno County committee members, other members who couldn't make it today who work on the California DISLCOSE Act, and I'm just going to say ditto, ditto, ditto, ditto. I mean, they all took away what I wanted to say and I've been coming up for six or seven years. I'm tired, but I'll keep coming if you -- I really want you to approve this bill. Oh, please save us.

Male: Ditto. Ditto.

Chris Hamilton: Chris Hamilton from Berkeley. I'm tired of looking at the TV ads with opaque, somewhat appealing names. You don't really know who's behind them. This bill will cure that. Please support the disclosure so the top three funders that are really behind the proposal being advertised will be known. Thank you.

Dr. Pat Sacks: I'm Dr. Pat Sacks, retired social worker from Oakland. I came to 249 when I learned that between nine and \$11,000,000,000 a year does not go to California because of corporations that are under Prop 13 and I know there will be a proposition on the ballot in '18 to exclude corporations from Prop 13, but it will be slaughtered if corporations can hide behind what they can hide behind now, so please for the sake of education and healthcare and all that will -- all that money will go to if California has it finally. Thank you.

Geraldine Stapleton: Geraldine Stapleton, president of the California National Organization for Women, which is the largest women's organization. We are a very strong support of AB 249. Somebody else pointed out in terms of the dark money that are in the legislative

elections and also the school board elections in Los Angeles, California there was -- it was the largest amount of -- millions of dollars was spent just to get one seat on the LAUSD. The general public is -- if you're not working within the process, you know, either with legislation or campaigns, you're not really very aware and when pieces of -- go out, you know, to the voters, they have absolutely no idea of who's paying, or the TV ads that they depend upon to get their information. They really don't know any better and they really have a right to know actually who is funding those, so we really, really would appreciate an aye vote from you and your support. Thank you very much.

Maryann Kirsch: My name is Maryann Kirsch and I'm from Davis and I want to say that as an average person representing my nonprofit, I have reason -- I had reason to get on the website for the Secretary of State and for the Equalization Board and I did find it difficult, even when I had people working with me, so I want to say that I think that having the ads is really going to reach more people to really know who is paying for the political bills, so I thank you for your gracious listening to us and I urge you to support the bill to give people faith in their government again. Thank you.

Robert Packard: Hi. My name is Robert Packard. I'm from Penn Valley up in Nevada County. I'm a voter. I'm a voter that needs help in figuring out who's paying for the advertisements so I can understand how to evaluate them. So I think this bill takes care of that. I thank you for your consideration of that and for your patience with us. Thank you.

Howard Maddis: Hello. My name is Howard Maddis (phonetic). I'm a Oakland voter. I've been using the internet before it was even named. I use the internet to buy things, sell things, maybe read a newspaper, but when I want to vote on something, it's too complex. What I want is a clear way, when I see a proposition, who's supporting it, when I see a mail in the mail, who is behind it so I can know why people are supporting it and that really helps as a voter make a decision, so please support AB 249.

Sherry Fitzgerald: Sherry Fitzgerald, Vallejo, California. I traveled here today to ask you to vote for 249. Thank you.

Bob Moore: I'm Bob Moore from San Jose, California. I agree with the comments that have made before me, so I will yield the rest of my time.

Ralph Finley: And I'll take it. Ralph Finley from San Jose. I've spent almost the last two years collecting petitions and signatures. We've collected over 100,000 signatures this year. This has overwhelming grassroots support. Please.

Robert Cook: My name's Robert Cook. I'm from Sacramento. People don't want misleading ads, but they do want who's funding the ads. Thank you. This bill's needed.

Jennifer Hagey: Hi, my name is Jennifer (inaudible) from San Francisco. I have many (inaudible) who still are not using the internet. Please support AB 249. Thank you.

Lee Hammock: Lee Hammock from San Francisco. Everything that I've been thinking has already been said except one thing, which is, you can do better than neutral, can't you? Come on, really.

Shalane Vanktish: Hi, I'm Shalane Vanktish (phonetic) from Santa Clara and like most of the people here, I'm here to urge you to be bold, to do the right thing for the voters of California, and to support 249. Thank you.

Graham Huey: Name is Graham Huey from Walnut Creek. I notice that many political ads have false and misleading information, so by knowing who's actually paying for the ads will give us -- make us more informed voter. We can make the right decision. Thank you.

Dr. Esther Sistone: Dr. Esther Sistone from Yolo County, where all of my representatives have supported this bill, I'm very proud to say, and simply echo, echo. This is needed. We do recognize as voters that whoever is funding the ads is actually -- has a much bigger voice than any of us as individuals and that's critical in making an informed decision. Thank you.

Richard Rose: My name is Richard Rose. I'm retired from Davis, California. I ask that you please support AB 249 and support democracy in California. Thank you.

Bill Holton: Hi, I'm Bill Holton from Sunnyvale, California. I'm frustrated, like many other people, and you can help relieve that frustration by supporting this bill so that we have better information and more accurate information when we vote. Thank you.

Pat Schwinn: Hi, my name is Pat Schwinn. I took the train from Oakland, California this morning to say this is common sense. People need to know who's behind the ads, not these funny names that sound appealing but mean nothing. Help us help the voters make an informed vote. Thank you.

Donna Polis: Donna Polis from Los Altos, California. Thank you for your both, which I'm sure is complex. I also support AB 249 so we can have informed voters. Thank you.

Susan Wilkey: My name is Susan Wilkey. I'm from Sacramento. I've noticed the current practices is almost like a theatrical event. It is like equivalent to a scrim in theater, which is a cotton cloth that's put before an object on the stage. It distorts. It can hide in plain sight the object. It can also mask and you cannot see what the object really is until the scrim is removed and I think that we need to remove the scrim so that we can see what is the object in front of us so that we can make a decision about how we want to vote. Thank you very much.

Lorna Berman: Hi, I'm Lorna Enero-Berman from Davis and I'm here to urge you to vote on transparency and fairness in our elections. Thank you.

Dan Berman: I'm Dan Berman from Davis, have the pleasure of being married to Lorna Enero-Berman from Davis. Been involved in one thing or another politically since the early '60s, starting with -- I don't want to go into it, but I'm a retiree and a member of the SEIU

1000, used to be a staffer for the oil, chem, and atomic workers. I think it's very, very important to support this and I hope you do support it as a commission and I think if you do, maybe the Governor will sign it.

Louise Mailer: Thank you all for your patience. Louise Mailer from Sacramento adding my presence in support of AB 249. Thank you.

Amy Samuelson: Hi, I'm Amy Samuelson from San Jose and I want to thank you for your work and you -- and please support the DISCLOSE Act. We've been working on it for seven long years. Thank you.

DonCurry: Don Curry from Menlo Park. My argument is that having clear disclosure of who funds ads will improve the quality of the ads because they're now branded, so you put your name out there. The ads reflect on you, so I think it'll improve the political advertising to have this disclosure. Please support it.

Brady Weneeh: Good afternoon, Commission. My name is Brady Weneeh (phonetic). I'm a citizen of the earth and I'm asking you to support this because the burning of fossil fuels is destroying all living beings' chance at a good life on this earth and this bill will help us to feed fossil fuels and transition to a more sustainable energy system. Thank you.

Alice Eversole: Alice Eversole from Tracy. For the last two and a half years, I've been working getting signatures. We've gotten thousands in San Joaquin County. On behalf of the people of Tracy, please pass AB 249.

Bob Eversole: Hi, I'm Bob Eversole from Tracy and I come today with hat in hand to ask you to please support 249.

Carol Pensen: Hi, I'm Carol Pensen. I'm from Martinez. I'm with various organizations, as you can see, and I want to tell you that joint Yale and Northwestern studies show that the United States is an oligarchy and I would like you to strike a blow for democracy by supporting AB 249. Thank you.

Gloria Purcell: Gloria Purcell, Belmont. Thank you for listening to us speak. I'm from San Mateo County, where Kevin Mullen and Jerry Hill are my representatives. Please do support 249. Thank you.

Kathy Kerman: I'm Kathy Kerman. I'm a voter from Mountain View. Please support AB 249.

Ann Harvey: I'm Ann Harvey. I'm a voter from Oakland, been voting since the mid '70s after getting an excellent California public education and as far as the commensurate benefit, I wonder if Prop 13 ever would've been passed if we had known who was behind that. Huge consequences, huge benefits for us to be able to vote the weighty things that we decide as voters with full information.

Pat Lang: Hi, Pat Lang, Los Altos Hills. Please vote yes on 249. Thank you.

Loretta Demandall: My name's Loretta Giveta-Demandall (phonetic) from Milpitas, California. I would like to ask commissioners to please approve this AB 249. I truly appreciate this opportunity because I came from the Philippines and we don't have this kind of process, so please approve it. Thank you.

Tom Shaw: Tom Shaw from San Jose. Strongly urge you to support AB 249.

Dwayne Jones: Thank you for giving up your lunchtime today. My name is Dwayne Jones. I live in a retirement community in San Jose and let me tell you that being able to see the real advertisers, the people paying for the ads on TV, will make a lot of difference in how my residents vote. Thank you.

Cheryl Keith: Hello, I'm Cheryl Keith. I'm a native Californian. I've lived at both ends of the state, got my education here, and I don't think there is any legislation in the last 10 years that is more important than this bill. People everywhere in this state need to know who's funding what they're being asked to vote for. Thank you.

Kevin Wolf: Hi, my name's Kevin Wolf. I'm from Davis. I'm in support of this, encourage you to do so, but I also want to ask you to not drop opposition on the senate floor 45 minutes before the vote. That could've derailed this thing. Responsible to get that kind of opposition in a more timely manner. Thank you.

Mei Ling Steffen: I'm Mei Ling Steffen from Sunnyvale. I became a naturalized citizen so that I can vote. Please endorse AB 249. Do what is right and fair for Californians and the rest of the nation will also be great (inaudible).

Shirley Shalingusky: Hello. I'm Shirley Shalingusky (phonetic) from Pleasant Hill and I'm the east bay coordinator for California Clean Money. I met in a grassstops meeting with five of our legislators and they thoroughly agreed that dark money in politics is a bad thing and they all voted yes on the California DISCLOSE Act, and two actually coauthored, so this is a very important thing. Dark money has been ruining our country and I'm asking you to bring some civility back. Thank you so much.

Nancy Neff: I'm Nancy Neff from Palo Alto asking for your support for the DISCLOSE Act, which is the easiest thing I have ever collected signatures for.

Mary Gill: Mary Gill from Stanford. I'm one of the 85% of Californians who want disclosure on ballot measure ads.

David Bacay: I'm David Bacay from Davis. I just think as long as money's considered free speech, we should know -- the public should be able to know who's shouting at us.

Mary Ratner: Mary Ratner, Menlo Park, California. Quite simply, the Information Age has become the Misinformation Age. Please support this.

Pam Johnson: Pam Johnson, San Jose. Please support this bill. Thank you.

Al Chase: Al Chase, San Francisco. In the Citizens United case, of all things, eight of the nine justices cited the importance of disclosing the real funders of political ads. AB 249 meets that need. I ask you to endorse it. Thank you.

Alan Brinker: I'm Alan Brinker from Santa Clara, California, and if you stop and think about it, on a national basis, if we had a law like this and the Russians had to disclose in their Facebook ads, our news would be altogether different, right? And I know you don't like taking on extra work in your organization and money's tight, but this one's too critical, so, you know, if people had known that the recent ballot measure about the medical -- raising the malpractice limit was totally -- every dollar was paid for by the insurance company that handles that insurance, that election would've come out different and measure after measure, we deserve to know. An educated voter is the best voter. Thank you.

David Shurick: David Shurick (phonetic), Orinda, California. I think the Commission should support this legislation. Thank you.

Shelly Carroll: Hi. I'm Shelly Carroll from San Francisco. I've done data entry for this bill and others before it for a while. I'd like you to support AB 249, which will help ensure fair political practices. Thank you.

Mary Seeger: Mary Helen Seeger, Solano County rancher, really asking for your support on this bill. Thank you.

Jeb: My name is Jeb, no relation to Mr. Bush. You would be right, in case you haven't noticed already, that I wear this shirt with great pride. I was not old enough to vote in the United States when I joined the Peace Corps because the voting age was 21 and I went and registered at the United States Embassy in Manila. Thanks to this shirt, I met at least two other Peace Corps volunteers in the room right now: Brazil and Honduras. There may be some more. I strongly encourage you to support AB 249. Thank you.

Craig Dunkerly: My name is Craig Dunkerly. I serve on the Santa Clara Citizens Advisory Commission for Elections. I have late breaking news of considerable import to the Commission. I am the last person who will be giving public comment. Very briefly, cynicism is the enemy of democracy and one of the things that these confusing committee names and the inability of voters to see who's really paying for them breeds that cynicism. It causes people to drop out. It causes people to say, to heck with it. They're all a bunch of crooks. The Commission can go a long way towards helping take a first step towards undoing that cynicism, so thank you very much. Appreciate your time. (Inaudible) They've heard it anyway. Our word is our bond.

Chair Remke: Okay, questions from the Commissioners for staff? Comments, questions?

Commissioner Hayward: Alright, I just want to make sure the things I think I know are in fact true. AB 249 was amended prior to the floor in the senate committee? Help me out with the timing of the last slew of amendments.

Phillip Ung, Legislative Director: Yeah, I'm trying to figure out where you want me to start because this bill started --

Commissioner Hayward: No, I mean --

Phillip Ung: -- as AB 14 --

Commissioner Hayward: Uh-huh.

Phillip Ung: -- in January of this year. At some point, AB 14 wasn't being heard by the policy committees in the Assembly and I think -- I believe in late spring, AB 249, which had already crossed the Assembly into the Senate, was -- the term of art we use is gutted and amended of its --

Commissioner Hayward: So it wasn't the DISCLOSE Act?

Phillip Ung: It was not. It was an environmental protection bill --

Commissioner Hayward: Okay.

Phillip Ung: -- that was gutted and then AB 14's language was then placed into AB 249. The senate rules committee then, as it usually does, take, gut, and amends and reassigns them to a committee. The rules committee was not making a decision on AB 249, I believe, for a couple of months and at that point, the author of AB 249, Mr. Jimmy Gomez, left for Congress. He was elected in a special election earlier this year and left for Congress and then in late August, Mr. Mullen was named the new author and then on August 23rd, we received -- it received substantial amendment, and between August 23rd and 29th, two other amendments occurred during that timeframe. In that time span, the bill went from the Senate Rules Committee to Senate elections to Senate Appropriations to the floor in seven days, a process that in regular order would usually take several months, and that's why we were, I guess, slow to react: because we have monthly meetings with y'all and then it was subsequently passed from the Senate to the Assembly and now on the Governor's desk, so all of that is about three weeks of action, three to four weeks of action.

Commissioner Hayward: Okay, so it's been a fairly compressed period of time that the bill has been the bill that we're seeing before us right now?

Phillip Ung: Yes, that's correct.

Commissioner Hayward: Okay, can you briefly describe what the latest package of amendments changed?

Phillip Ung: Yeah, between the version that we saw prior to August 23rd and the amendments that came in August 23rd was -- there were some sections added to the

definition of advertisement. That would be section 684501 and that would be, I believe, starting in -- that's C-3. All of that was new for the bill.

Commissioner Hayward: Yeah, what did it do?

Phillip Ung: Well, it -- I guess that's the complexity part that we were talking about is because it describes an earmarking process for primarily formed committees earmarking money through primary formed committees for state candidates and state ballot measures. Our staff has looked at this provision *ad nauseum* and trying to figure out what it is that they're trying to describe here and why it only describes primarily formed committees and no other committees, and so we have yet to really figure out -- we have some literature from the sponsors that I think gives us some inkling or inclination of what it is they were aiming for, but literature from a sponsor, of course, is not legislative intent, so it's difficult for us to really --

Commissioner Hayward: Yeah, but if you're trying to solve a mystery, it's a piece of something.

Phillip Ung: It's something, yes, and there are other sections, yes.

Commissioner Hayward: (Overlapping) I mean, I want to be a little kind of -- a little systematic of this. What do they say that they were trying to do?

Phillip Ung: I'm a law student and I think that's hearsay, so I don't want to try to describe what they believe they are trying to do and so I think that may be a question for them.

Commissioner Hayward: Alright, so there's the amendments to advertising and the earmarking from primarily formed to primarily formed that you just described, okay. What else did the --

Phillip Ung: They added also section -- let me see here -- section 2584510, which is an enforcement section that deals with treble fines --

Commissioner Hayward: Uh-huh.

Phillip Ung: -- for folks who violate advertising disclosure rules. That enforcement and treble fine section was not in any previous versions of this bill, so that was new, and then --

Commissioner Hayward: Let me stop you right there.

Phillip Ung: Yes.

Commissioner Hayward: We do have treble damages already available at 84510 for three times the cost of the advertisement. Is there a different scope to what treble damages apply to under this bill versus what we already have?

Phillip Ung: It does and I may want to turn to Sukhi on that.

Commissioner Hayward: Sure. Rock out.

Sukhi Brar, Commission Counsel: Well, the different -- they limit it a little bit in this bill to certain types of violations. They take away prosecutorial discretion from our enforcement division when it comes to those, and they describe it as somewhat technical items, but I think that that really should be left up to the enforcement division rather than being limited here in this language.

Phillip Ung: And also, the language of the bill -- under current law, a violation of Article 4 advertising disclosure, whether intentional or unintentional, would be subject to treble fines, of course, under the discretion that our enforcement division has. Under the new bill, only two sections of this new advertising scheme would be subject to treble fines for intentional or unintentional. The rest of the very detailed sections of the bill that deals with what should be featured in a type of advertisement would be only subject to treble fines under two elements that must be met, which is there must be intent to violate and for the purpose of avoiding disclosure, and so it -- as Suki said, very much narrows our ability and discretion.

Chair Remke: But it's not just for technical violations. It's also for all of 84502, which is the new paid for by the strongest, most generic requirement under the bill. It would not allow -- so you could not have that most basic requirement on here, paid for by a political party or a candidate and we would not be able to go after treble damages, which are probably some of the ones that would have cost the most money to run.

Commissioner Hayward: Okay, so -- okay, now moving along in the amendment package.

Phillip Ung: Okay, another addition would be under section 27 of the bill, 85704, they have added -- sorry, this -- take this out real quick. They added in the August 23rd amendment. Let's see here, D and E of that section, which again describes a process of how committees are to report earmarked funds between certain committees and so there -- it pretty much describes a process that we have that require them to do now, but they are codifying the instructions in a way and in some places, they are adding some new requirements, including requiring committees to add notations to their campaign forms and there's one sentence in here that I think worries staff, which -- I don't know if now's the time to turn to it if that's what --

Commissioner Hayward: Sure, let's --

Phillip Ung: -- you're looking for --

Commissioner Hayward: -- do it.

Phillip Ung: -- Commissioner Hayward, but under E-3 of that section, I believe it's the second sentence. As they're describing this instruction, it says, "Compliance with this paragraph satisfies the contributor's disclosure obligation under this title." So not just this article or a certain type of filing, but the entire title of the Political Reform Act, so that's a worrisome sentence because it's a -- there's a lot of obligations under (overlapping).

Commissioner Hayward: So we've got a provision in -- this is in earmarking?

Phillip Ung: This is in earmarking, yes.

Commissioner Hayward: Which is just a way of making sure that the true source of money is the source that's being reported.

Phillip Ung: Correct.

Commissioner Hayward: Okay, I'm --

Chair Remke: Which is similar to how it's required under existing law.

Commissioner Hayward: Yeah, yeah, which is -- we have earmarking rules already, but yet we've now also got a provision in this particular statute that says that if this is done right, you're fine regardless of what other things you might have needed to do and didn't do.

Phillip Ung: Under our current staff interpretation, yes, and there's no legislative clarification on that point.

Commissioner Hayward: And you haven't gotten clarification from author, staff, or supporters or Reddit or the interwebs or wherever else you might find clarification?

Phillip Ung: The speed at which this bill moved through the legislature, we're not 100% sure that everybody was examining it sentence by sentence like the Commission staff was.

Commissioner Hayward: Fair enough, okay. Let's move on through the package.

Phillip Ung: I believe that was essentially the thrust of the changes on the August 23rd, and then most of the bill remained the same from prior versions, which under previous staff reports we had raised as concerns.

Commissioner Hayward: So we've got a DISCLOSE Act which enhances the Prop 208 requirements for advertising disclosure of true donors of \$50,000 or more, which I think is something that at least most of the people who have been speaking to us this afternoon are interested in and concerned about, and then we've got -- so was it in the bill previous to August 23rd that membership organizations that solicited earmarked contributions as part of due fee assessments -- as long as the money solicited was under \$500, it would be declared not to be earmarked. Was that part of the bill previous to the 23rd or is that part of the earmarking stuff that we were talking about just now?

Phillip Ung: That was part of the bill, part of 249 prior to the 23rd amendment.

Commissioner Hayward: Okay.

Phillip Ung: Under AB 14, I believe it took a different shape in that it only carved out that exception with money was going to specified ballot measure committees --

Commissioner Hayward: Okay.

Phillip Ung: -- and that language was taken out.

Chair Remke: But this earlier version as well was only to ballot measures and then the last amendment --

Phillip Ung: There was a version of one of these two bills that carved out this --

Chair Remke: The last week amendments --

Phillip Ung: -- section just for --

Chair Remke: -- took out the limitation to ballot measures and allowed it to be to (overlapping).

Commissioner Hayward: So this is a little why I want to do a step by step even though I know it's probably tedious for some people is that I think there's a lot of this that we're still thinking about and the devil can be in the details, notwithstanding the fact that some of the broad things done in this act, in 249, resemble what the DISCLOSE Act has been for a while. So I want to move away from that to -- what is your understanding -- and maybe this is a question for - not for Phillip but for somebody -- other legal person, but -- of the effect on us currently of the injunction in the California Republican Party, Democratic Party, and Orange County Republican Party case.

Sukhi Brar, Commission Counsel: Okay, I can talk about that. So that case basically prohibits us from enforcing top donor disclosure against general purpose committees and this bill will now try to require us to have general purpose committees disclose top donors on their ads.

Commissioner Hayward: Okay.

Sukhi Brar: It'll be in different section numbers. That case specifically referred to certain section numbers that are currently in the act, so right now we are enjoined from enforcing those provisions.

Commissioner Hayward: And general purpose committees include political party committees?

Sukhi Brar: They do.

Commissioner Hayward: And I learned from a stip also -- today's agenda also includes major committees, which aren't committees at all; they're just people. But be that as it may, so the logic behind that, which I will just try to summarize, but tell me if I'm wrong, is that when you've got the upstart committee with the pretty name that really is all about helping or defeating a particular candidate or particular political committee, penetrating that veil and knowing who the top donors are is useful.

Sukhi Brar: Yes.

Commissioner Hayward: When you've got a general purpose committee that may have perpetual life over decades, whoever the top two donors were in that last year may be an artifact or an accident, but may not tell you really something useful. It might be misleading. We don't know. I mean, it could be, it could not be, but you've got information with those perpetual general purpose committees with a long history of participation in politics that you don't have with the upstart committees, so I think that was the balance that the court was trying to --

Sukhi Brar: Yes, that's exactly right.

Commissioner Hayward: That's right? Okay, good. Yeah, I guess -- I think I'm out of questions for staff for now, but thank you very much for all your hard work. I know it's been a busy time.

Chair Remke: Commissioners, any additional questions at this time, and I know Mr. Lange, you want to respond and I'll let you respond, but I'm going to get through some questions first.

Commissioner Audero: I have some questions, but I think I'd like to hear your response because that may answer my questions. Okay, yeah, sure, fair enough.

Chair Remke: Commissioner Hatch, do you have any questions for staff?

Commissioner Hatch: Yeah, I was looking at my questions.

Chair Remke: Okay, why don't you go ahead then.

Commissioner Hatch: Actually, I was just looking up -- trying to look up some of the previous bills, but I didn't get a chance to get to where I was looking where I think some of these issues you raised in previous bill numbers -- is that not true, in your previous legislative reports at the time?

Phillip Ung: Right, well, this year we raised the same concerns for AB 14 and then last year, the Commission --

Commissioner Hatch: (Overlapping.)

Phillip Ung: Under AB 700 last year, the Commission unanimously voted to oppose AB 700, which had common provisions as this bill.

Commissioner Hatch: Uh-huh. Are you sure that this treble damage thing -- the language you think is going to prevent you from doing something that you can now currently do and how big a deal is that? I mean, is it fixable with a trailer bill?

Phillip Ung: Anything's fixable with subsequent legislation. But our belief is that those elements of intentionality for the purpose of avoiding disclosure aren't currently elements in 84510 as it relates to violations of advertising disclosure.

Commissioner Hatch: And you're 100% sure of that?

Phillip Ung: I'm sorry?

Commissioner Hatch: And you're 100% sure of that?

Phillip Ung: Under -- yeah.

Sukhi Brar: Yeah, and I also agree with Phil on that.

Commissioner Hatch: Okay, thank you.

Erin Peth, Executive Director: Commissioner Hatch, if I could just add to that quickly. I was speaking to our enforcement division about that provision earlier. You know, I think there's some discussion sometimes on the Commission about sort of the cost of doing business and whether the fine, the \$5,000 fine, is sufficient to deter people, you know, and I think when you're looking at especially television advertising, you know, you're running millions and millions of dollars worth of ads and potentially rolling back our ability to seek triple damages on advertising, you know, there might be -- and I'm not, you know, I'm just offering this as a thought. You know, I think that there is some sort of -- this gives a bigger hammer to prevent sort of the analysis of, this is just the cost of doing business on that type of advertising, and then I also think, you know, I would argue at least that a section -- penalty section like this is a deterrent to violating the Act, so those are just some thoughts from Enforcement.

Commissioner Hatch: But really, when you're doing, you know, multimillion dollar ad buys, none of the stuff we have in existing law or regulation adequately addresses that issue of how much does it take to make them want to think about it twice before they put up those deceptive ad campaigns, so we would -- I would love to see, you know, somebody come to the floor with legislation to attack those issues next year. But I don't want to get in the way of a good idea that's, you know, before us now. Thank you.

Chair Remke: Additional questions?

Commissioner Audero: Yeah, I want to go back to the treble damages thing. It sounds like a power struggle to me. It sounds like the voters want to do one thing and we just don't like it, and we want to be able to assess treble damages, from what I'm hearing. I have no opinion on this. From what I'm hearing, it sounds like we want to be able to assess treble damages whenever we feel like it and the voters are saying, hold on a minute. Yeah, okay, the legislature is saying, hold on a minute. We don't want you to do it whenever you feel like it. We want to tell you when to do it and we want to tell you that we would prefer that it be when it's intentional conduct. So who are we to say that it should be whenever we want? I mean, why not let this be legislated?

Sukhi Brar: I don't see a reason for specifically excluding the possibility of having treble damages in the bill, because there could be a number of reasons why intent can't be proven

but there was intent, so I think it should be left up to the Commission and Enforcement Division to decide in those cases whether treble damages should be assessed.

Commissioner Audero: Well, but isn't that the issue, right? I mean, isn't the issue that the legislature is saying, no, you must prove intent?

Sukhi Brar: Yes, that is what they're saying.

Commissioner Audero: Okay, so if that's what they're saying, then that's what they want and they don't want to leave it open to the Commission --

Sukhi Brar: Yes, that's true.

Commissioner Audero: -- to just decide. So it is a power struggle here.

Sukhi Brar: It is a power struggle, but it just depends on what policy we want to advance on it.

Phillip Ung: Oh, sorry. What I was going to say, Commissioner, when you asked the existential question of, who are we --

Commissioner Audero: Yes.

Phillip Ung: -- I think --

Commissioner Audero: (Overlapping.)

Phillip Ung: -- I think there's naturally a power struggle between the FPPC and the legislature because we are not like other executive branch agencies. We're an independent agency created by the voters and focused on this one particular act and the interpretation of that act, and the entire bill is filled with the legislature and the voters telling us what we should and should not do, and it's -- from our side of the table, staff's responsibility to flag where we think our discretion may perhaps be weakened or changed by the legislature's direction.

Commissioner Audero: Sure, no, I get that. I understand, but at bottom, I think this issue becomes, the FPPC wants a lot more power than the legislature wants to give it under this bill. Would you agree?

Phillip Ung: That's above my pay grade.

Commissioner Audero: Okay, well, so here's the problem I have with that answer is that somebody here has to answer this question. Somebody has to answer questions that we pose, just -- and, you know, and I would say that you said this earlier. It's like, well, I don't want to interpret -- I think -- I have difficulty when staff is making recommendations for staff to say, I don't understand what they're saying and I'm not going to repeat what they're saying. I mean, we have to have some -- unless you're saying it was -- what they said to us was so muddled, incomprehensible, nobody could make sense of this. Okay, that's fair enough and

therefore maybe because of that, we have a concern, but I mean, we have people to answer that question, but I just don't -- I don't think it's appropriate for us to take a position one way or the other without being able to articulate what we understand is happening. So I mean, I'd like to hear your thoughts on that because it concerns me that we would even dare to take a position without understanding what the other side is saying.

Phillip Ung: Right, and staff -- thank you for that, Commissioner. Staff, as you know, we do our due diligence to figure out as much information as we can from any available sources, especially legislature, as it addresses legislation. For the issues that are listed within the staff memo, those are issues that we feel fairly confident we understand where they're going, although there is the catchall of, there's complexity. There's some uncertainty that comes with this bill because of our ability to interpret it and, you know, through regulation and we don't know -- without a whole lot of legislative intent, it's hard to tell how they want us to interpret it and -- I'm sorry, go ahead.

Commissioner Audero: No, please finish.

Phillip Ung: Actually lost my train of thought because it's lunchtime and my blood sugar's low, but that's okay.

Commissioner Audero: I'm sorry, I didn't mean to throw you off.

Phillip Ung: That's okay, go ahead.

Commissioner Audero: So I guess I see it as, we're going to take a position. Our position seems to be based on, in part at least, on our lack of understanding of what the other side is saying. We have a bunch of people in this room today who can probably answer our questions, and so I guess maybe what we do is, why don't you ask the question of what you don't understand? Let's see if we can get this answered in front of everybody before we take a vote.

Chair Remke: We're going to allow for a response period. We're just going to get through some of the questions, maybe compile the questions or issues and then allow a response from -- I'm assuming the sponsor will have some responses to some of the questions raised.

Commissioner Hatch: I have a follow up question.

Chair Remke: Do you have a follow up? Go ahead.

Commissioner Hatch: I went back through a couple years of legislative reports and they're all pretty much the same format and going back even to predate you. I think it's kind of been done that way a long time, but a lot of folks in this room are used to getting an attempted balanced report. That is to say, they give you who's the sponsor, who's the opponents. Here's what the sponsors say. Here's what the opponents say. You know, here's the points of technical issues that may or may not want to be raised by the members. You get some sense of balance. What we don't get here for us to contemplate is that sense of balance and

it's institutional. It's not your fault. I don't mean to denigrate you in any way, but going forward, I think we need to figure out a new way to, you know, report on legislation. Rhetorical.

Chair Remke: Okay, well, I will just say that I agree with the concerns raised by staff and I appreciate your pointing out the concerns that have been, as you stated, ongoing for some time, whether it's AB 700, 14, or 249. And I know that taking those -- making those statements is obviously not easy in this room, but I do think that they are worthy concerns and as far as what we're supposed to do with these, I think when we call something the DISCLOSE Act, but then there are valid concerns of it narrowing our enforcement remedies, that's not disputable. It's narrowing our enforcement remedies. It's narrowing the circumstances when we can track earmarking, which we don't even really need to touch earmarking for the purposes of this issue, as we've talked about again and again, so I won't repeat all of that, because we do have the -- you cannot make a contribution in the name of another for the purposes of avoiding disclosure. So we've got it narrows enforcement. It narrows our circumstances of earmarking. It has to say the least -- and this perhaps goes to that -- confusing language as to how we would implement this and the purpose. I understand there's been some justification provided for the \$500 exemption for membership organizations, but I don't think the explanation is consistent with existing law, which already requires the membership organization to be noted on the campaign statements, and we can go through that in detail if we want. I will say that I also appreciate some of the comments from Trent and some of the others which acknowledge the work California has done, because I think we can't lose sight in what we're trying to achieve is where we are already. I mean, California is often cited as having the toughest disclosure and enforcement laws in the country, and that's because of the work of the people at this desk, who have worked very hard over the last five plus years to get us here. I mean, as a result of that, for example, we have a prohibition on dark money in California and now I know dark money is used loosely and often incorrectly, including today, because this bill does not touch on dark money, I'm sorry to say. This bill's about disclosure and contributions flowing, but that's different than dark money and I know it's a detail that people don't like to talk about, but again, we have a regulation and a statute on dark money. It is nationally known as one of the strongest in the country, okay? Also, again, where are we today? We require top donors to be disclosed on ads, the top two donors, \$50,000 or more. In addition, because of the work of this agency and this staff here, we also have our top 10 list, which is pretty amazing. I'm curious how many people who stood up today have looked at our website, at the top 10 list of ballot measures. A few. I'd encourage more of you, because what that top 10 list does is, for every ballot measure in this state, when a committee raises \$1,000,000 or more, they have to lift their top 10. You know what that showed in the last election? It showed who spent 80% of that 445,000,000, just by looking at the top 10 lists that are out there already and required, and that was a lot of work to get there.

Male: Excuse me, where is that?

Chair Remke: It's on our website.

Male: Online?

Chair Remke: Yeah. No, I understand. I'm actually not here to debate right now. I've let everyone have an opportunity and I would ask the same and I will give you an opportunity to respond. I say all of that not to enter into debate that more is not necessary, because more is necessary and I get that, but it's also to say that, you know, when we're -- this group here is coming at this with the best interest in mind. We have to acknowledge what we have now, what's good about it, and when we have serious concerns and staff has serious concerns, I would hope that you would take those into consideration and I don't feel, over the last several years, that they have been taken into consideration. I understand Mr. Lange's shaking his head, but again, this list here are things we've been talking about at least three years that I've been here and I know more for some of you. It's not that the goals aren't admirable. I 100% support the goals of the bill, but as has been said, the devil is in the detail and there's some devils in this detail, so again, I thank staff and I share the concerns.

Chair Remke: Commissioner Audero?

Commissioner Audero: So I am the first to applaud the work that you guys do. There's no question about it. I don't think there's a single person in this room -- every person who made their way from whatever city, whatever town they came to, not a single one of them criticized your work, so that's not the point. We applaud your work, but I do take issue with just because we are number one in the nation, that's good enough. There is -- and I recognize that Chair Remke herself acknowledged that more can be done, but so what? How does that have anything to do with what we're talking about here? I agree that you have a level of expertise that I think that the public should listen to and trust, but not trust blindly and by the way, if the public wants to debate, then I think that we should, you know, debate and if the public wants to change what we think is -- we as a Commission think is the way to go, then we should listen to that and if the legislature has a different idea, we should listen to that as well. You know, the whole -- nobody doubts that you have the best interest at heart of California, but okay. I mean, I think this Commission gets patted on the back quite a bit for the work that they do and I think that's great, but that to me is irrelevant. I think that we need to look at what needs to be done, what the legislature would like us to do. I absolutely value your opinion, but not because we should be done, but because you have something that is of value, but that doesn't mean that we don't also listen to the people and the legislature, so that said -- and maybe we're not at that point, but I would like to get some answers. I would love to hear every question you have of something that you don't understand in this bill posed to the people in this room so that we can be done, get the answers that you want and be done.

Chair Remke: So I think that we've heard some issues of concern raised by staff about things we don't understand, some of the late amendments, so perhaps if you addressed those, that will resolve and we can move on.

Trent Lange: (Inaudible) thank you very much for the questions and I'll try to answer (inaudible). Is that better? Okay, there we go. Thank you very much for the questions. I'll try to answer the questions that I remember. If I miss a couple of them, then I'm happy to answer other of them. On the -- as sponsor of the legislation, the purpose of the narrowing of the treble damages -- it's not narrowing. Course, you are allowed to -- with intentional violations, you must prove intent. As staff correctly points out, this bill does have more complex formatting disclosure requirements than current law and we did not want to -- and the author did not want to cause potentially triple violations, which could get very expensive, even for relatively small advertising actors if they were not intentionally -- if they did not intentionally make a mistake. If they made some inadvertent mistake in formatting font, et cetera, and one of the things that was pointed out about that particular section is that intent is actually relatively easy to -- should be actually relatively easy to prove. If somebody points out the error to the advertiser and says, your formatting is violating the law, you can do that -- the Commission can certainly do that sort of letter. Other members of the public can do that sort of notice also and then if the advertiser continues to make that same violation, then obviously one can prove intent much more easily in that sort of circumstance, so it is meant -- yes, it was meant by the sponsor, meant by the legislature and I think the public would agree, many of whom have advertisements that they do in their small clubs and organizations, that they would not want to be subject to triple violations for potentially inadvertent errors in formatting, so that's why that particular change was made. It did specifically leave the triple violations without intent for the listing of the top contributors and for the listing of independent expenditure disclaimers required in current law, so that's where that is. I will say that many in the legislature actually gave us a lot of complaint about that this provision still allowed triple damages at all. I will point that out. That had to be defended against quite strongly.

Chair Remke: You mean the people we regulate?

Trent Lange: Yes, the people you regulate, and don't worry; we pushed back and the bill passed with bipartisan support, as you saw. I wanted to point out on the general purpose committee lawsuit, the Republican and Democratic Party vs. the FPPC that was referenced, looking at the actual judgment itself, the conclusion of the judgment itself, it did not enjoin all general purpose committees. It says, and I quote -- this is the final page, in the conclusion, "The preliminary injunction are hereby restrained and enjoined from enforcing California Code 84503 and 84506 against plaintiffs or similarly situated political party committees registered with the Secretary of State as general purpose committees pending entry of a final judgment in the case." There is no reference in this case to all general

purpose committees. I know that the Commission itself afterwards decided to extend that preliminary injunction which was never in fact ruled on and our attorneys, people with the Brennan Center for Justice and Campaign Legal Center, say in general that this is very defensible, even in light of Citizens United, even in light of this case, which we believe actually is not really the law of the land anymore, it did not enjoin you from listing -- required listing of top funders on general purpose committees in general, only political parties as per the wording of the conclusion of the case itself.

Chair Remke: Commissioner Hayward.

Commissioner Hayward: Were there general purpose committees apart from the parties as -- political parties as parties in that lawsuit?

Trent Lange: No, it was the Democratic Party -- the California Democratic Party, the California Republican Party, and the California Republican Party of Orange County, all examples there that the judge agreed with were parties.

Commissioner Hayward: So there's no call for talking about, in that order, general purpose committees apart from parties because there's no general purpose committees apart from parties before the court, right?

Trent Lange: Political parties were listed as being general purpose committees themselves, so that's probably why they did it that way, but there was no example of a general purpose committee raised in this case that was not a political party and the conclusion enjoined it from similarly situated political party committees.

Erin Peth: Commissioner Hayward, I believe Sukhi could add some light to it. It's kind of a complex factual situation that happened, because I believe the Commission actually issued some sort of resolution that was expansive.

Commissioner Hayward: If you don't mind, I'd like to hear from staff.

Trent Lange: Yes, please.

Commissioner Hayward: Awesome, thank you.

Sukhi Brar: We issued a resolution that was expansive that included general purpose committees. That was then submitted to the court. The court issued a stipulation for judgment of dismissal on this case and that stipulation specifically applies to general purpose committees and enjoins us from enforcing those sections against them.

Commissioner Hayward: And that's the -- that's what we're under right now, right?

Sukhi Brar: Yes.

Commissioner Hayward: And so that's the general -- what I would call the law of the land, wouldn't you? Maybe? No, okay, thanks. Thank you.

Commissioner Hatch: So we asked for it?

Sukhi Brar: We didn't ask for it. It was something that we agreed to and then the court ordered.

Commissioner Hatch: (Overlapping) asked for it then?

Sukhi Brar: Well, the plaintiffs asked for it and the court made a decision and then we decided to go ahead and stipulate to it.

Chair Remke: Mr. Lange, would you like to continue?

Trent Lange: Yeah, so I think that in general, the point that we believe was we have considerable outside expert opinion that believes that these requirements are quite defensible. The Brennan Center for Justice, on a previous version that had the similar sorts of requirements, said that "California DISCLOSE Act stands on a firm constitutional bedrock and is worthy of support," so yes, there is very much a chance and possibly a likelihood of legal cases afterwards, but that's not a reason to not go forward with important improved disclosure legislation, we would argue. Maybe rather than go -- those seemed like the two most important things I wanted to clarify. I'm happy to answer any --

Chair Remke: I think just the two --

Trent Lange: -- other questions.

Chair Remke: -- sections that I heard that you could perhaps provide a reasoning for that were added late were under the advertisement definition, subdivision C-3 under Top Contributors. I heard that mentioned.

Trent Lange: Thank you.

Chair Remke: It was unclear. I in fact thought when I first read this that the top contributors only applied to primarily formed committees as a result of this language.

Trent Lange: No, the intent is, top contributors applies to any committee, including general purpose committees, but not political party committees, partially due to this case. The intent, however, is to expand top contributors not only be the top three of \$50,000 or more instead of just the top two of \$50,000 or more, but to require earmarking tracing similar to current earmarking for particular candidates to also affect who may be seen as a top contributor when those funds are passed through one or more layers of primarily formed committees for the same specific candidate or ballot measure. That is the intent there. That is the heart of what all of these people care about is making sure that if a true contributor, an earmarked contributor, makes earmarking if their contributions are passed through one or more of these primarily formed committees, which is mostly what ballot measure funds are spent on, that they will potentially be one of the top three contributors to be displayed on the ad if they are one of the top three contributors at the end of the day. That is the intent.

Chair Remke: And the (inaudible) on that provision and the intent behind subdivision C(2)(b), I think it is, and I think this is also a new provision regarding the indemnity you're going to be providing to people involved in the earmarking, what was the thought there, if we're earmarking just because I received it? Can you explain that (overlapping)?

Trent Lange: Yeah, so the provision -- yes, thank you. C(2)(b) committee receiving earmarked contribution may rely on the information provided pursuant to (a). The reasoning there is that a committee that receives a contribution should be able to rely upon the information that the other committee provided to them, that if that committee deceives them, does not provide full information, it is not the fault of the committee that received the money and --

Chair Remke: But what if the committee that received the money is part of the earmarking scheme?

Trent Lange: That's an interesting question; however, in that case, the -- certainly the committees that gave funds will be fully responsible for providing the false information.

Chair Remke: But even if the committee that received it was part of the scheme, this provision provides them immunity, indemnity?

Trent Lange: That I could not speak upon -- speak to myself. The intent of this provision was to ensure that committees would not be subject to violations or fines if they were themselves deceived or got improper information which otherwise they could be liable (inaudible).

Chair Remke: But that's not what that says, right, because I mean, again, in earmarking, it's usually not just one bad apple; it is the process of funneling the money through.

Trent Lange: Well, this provision of course does not apply to the other 85704 earmarking sections for purposes of disclosure. It applies to the earmarking rules for purposes of who is displayed on ads, so it does not --

Chair Remke: That's that very narrow treble damage issue now, and I think the other section that was added late --

Commissioner Hatch: I'd like to (inaudible) on that section.

Chair Remke: Go ahead, Commissioner Hatch.

Commissioner Hatch: Thank you. Isn't it true that in the bill, you take what is a single focus section for earmarking and you expand on it and provide, sort of in an illustrative way, multiple paths that would cause you to be guilty of earmarking?

Trent Lange: Yes.

Commissioner Hatch: This multiple test, it's not that you have to meet all tests. It's one or the other. Whichever one snags you, then you're guilty of earmarking?

Trent Lange: That's precisely correct.

Commissioner Hatch: Okay, so it's actually an improvement over what we have now.

Trent Lange: We believe so. I know staff has raised concern about the particular paragraph that does require express consent. We believe that is one kind of earmarking, when there actually is express consent, but the other paragraph, paragraph two, does not require it and the very fact that it does not mention it -- I'm not an attorney, but our attorneys say that the very fact that it explicitly does not mention where paragraph one does shows that that paragraph does not require express consent.

Chair Remke: But Mr. Lange, on that point, because you keep focusing on the language of express consent, staff has also pointed out now again, I think for a couple years, the added language of specifically identified committee ballot measure or candidate, and again, this goes to those who actually prosecute these cases and their ability to prosecute cases and the circumstantial evidence on which they often rely. Existing law says any particular, which again requires a certain focus on -- this isn't just money I'm throwing out there. It has a direction, but to add the language specifically identified in addition to on the other paragraph, the express consent. Now, I understand that you may dispute that that has a concern again and that's why I went off on my -- I rely on staff who has been doing this and who is the only people in this room responsible for prosecuting these cases when they tell me that that's a concern, and I guess, because this concern has been raised for several years now, I'm a little bit lost why, if this is a DISCLOSE act, with the purpose of stopping earmarking and increasing transparency, why those words wouldn't come out, even if you disagree that they're problematic. We've got a strong group here saying it is problematic. Why wouldn't we just take them out? They're not there now.

Trent Lange: The reason is, we talked to a number of outside experts about if they thought there was any particular difference between any particular candidate or specifically identified candidate. Nobody outside of staff raised that concern.

Chair Remke: How many of those people you talked to prosecute cases?

Trent Lange: Well, we did talk to people who prosecute cases: your staff. We requested a single hypothetical example, even a hypothetical example where the difference between any particular candidate or specifically identified candidate would be a potential problem. They were not --

Chair Remke: And we've given you those.

Trent Lange: -- able to provide one.

Chair Remke: Oh, no, we have.

Trent Lange: And we actually said we would be able to -- I'm sorry. We actually said we would consider amending the legislation or requesting amending the legislation if they came

up with any problems and they did not.

Chair Remke: Well, because I've talked about this provision for several years with staff and their concerns, I know that examples have been provided, but again, I guess my issue is, if they're saying there's a concern and if you want the best DISCLOSE Act you can get, why wouldn't you take those words out? I feel like this is part of the negotiation that happened, which we weren't part of, which shows some concerns may be legitimate here.

Phillip Ung: Madam Chair, can I -- I'm sorry.

Chair Remke: Yeah.

Phillip Ung: If I can add --

Chair Remke: Well, let's see if (overlapping).

Phillip Ung: Yeah, sorry, go ahead, Trent.

Trent Lange: Again, if we had been -- if we had heard concerns from outside experts, and we actually did talk to outside experts who had prosecuted cases on this formerly from the Commission, then we might have considered to be a problem or if you had come up with hypothetical examples where it would have been a problem, but we did not hear any hypothetical examples, so that is why we did not change the legislation or suggest changing the legislation.

Chair Remke: Mr. Ung?

Phillip Ung: So Mr. Lange and I have gone back and forth on this particular issue, at least for me *ad nauseum*, to the point that my recollection -- and I know sensitive to hearsay, but I'm -- a go ahead and break that rule -- my recollection conversation is at one point, Mr. Lange and I just got to a point where he didn't believe there was a difference in the terms specifically identified committee and particular committee, and my response to him was, if there is no difference, then just use our term and drop the issue, and it hasn't been changed yet.

Commissioner Audero: I have a question about that, if I may.

Chair Remke: Commissioner Audero.

Commissioner Audero: Thank you. So did you provide a hypothetical?

Phillip Ung: I believe in previous years we have. In this year, I --

Commissioner Audero: What was it?

Phillip Ung: Yeah.

Commissioner Audero: Somebody, anybody, what was it?

Chair Remke: I can give several. For example, when you say a -- we asked -- and this is -- and I think this might jar your memory, Mr. Lange, when you gave the hypothetical because

we asked that you include the word. If you're going to keep specifically identified committee ballot measure candidate, we said, could you include the word "race" because even if you're not identifying a candidate, you are talking about a very hot contest where again, circumstantial evidence has shown that members of the legislature will say, well, we need to get as much money as we can into that race in southern California to flip the super majority, whatever it may be, but again it's spoken in code about what we're talking about. Another example that I know has been given at least in my presence is, when we're talking about ballot measures. There are -- for example, there was Prop 1 and 2 or, I mean, there's propositions that go together and you don't have to say Proposition 1 or 2 specifically identified. You say the subject matter of. If you give to us, we will be sure that the money makes it stop cap and trade. We will be sure that the money stops increasing taxes and again, I mean, those are just some examples, but this is again how cases are prosecuted and how the evidence turns out, and I just believe that there's more behind the resistance to taking this out than meets the eye, but maybe I'm wrong and then I'm just frustrated because again, we've asked for it. It's not in existing law, so why add it?

Trent Lange: And I do very much recollect those discussions and actually, we were considering and actually drafted language to include or specifically identified race which we thought was a good idea, but you can't always put everything that you want into legislation that there is, but the experts that we talked to after that did not see any difference themselves between any particular candidate or specifically identified candidate and this year, when we were at a state in the legislation when it would've been -- we would have been best potentially able to make that sort of change if we had received a hypothetical example from staff that we could use to argue for why, we specifically requested it and they were not able - they did not provide us with one.

Commissioner Hatch: Seems like a distinction without a difference. You have particular modified committee, ballot measure, or the candidate. I mean, it seems like it's perfectly adequate.

Trent Lange: That's what we were told.

Chair Remke: But I think the last provision, a question was asked that was added late in the game where provisions on 85704(d), subdivision D and E.

Trent Lange: Okay, so what -- what was the specific question about the --

Chair Remke: No, I think that was one of the areas where staff was asked -- we said that there was confusion as for the purpose to add this all in, including under E --

Phillip Ung: Three.

Chair Remke: -- three, "Compliance with this paragraph satisfies the contributor's disclosure obligations under this title," which is obviously the entire act.

Trent Lange: So in general, the reason for adding these sections was to provide greater clarity for earmarking rules. There were questions raised by stakeholders for examples of what if a committee only gave a portion of its earmarked contributions to another committee in an earmarked fashion? Which ones should be done? That's why the language about using a reasonable accounting method was added. There were potential concerns about what if a committee were to tell two different committees the same earmarked contributor that they thought had a popular name as opposed to another, so a lot of these things were added to add that sort of level of specificity.

Chair Remke: (Overlapping) that sentence, though?

Trent Lange: It was meant for compliance obligations under this title. I cannot actually speak exactly why it says "under this title" as opposed to under this article. I don't believe that would have any negative effect, but I don't -- I cannot speak to that at this moment.

Chair Remke: You don't believe it would have any effect on what? I'm sorry.

Trent Lange: I'm not sure -- I cannot speak to whether or not it's saying "under this title" as opposed to, under this article or under this section would make any difference. That I cannot do.

Chair Remke: Well, the article is the advertising --

Trent Lange: Yes.

Chair Remke: -- article, which is what you used when you talked about the remedies.

Trent Lange: Yes.

Chair Remke: And then this was -- is new language added and the title is the entire --

Trent Lange: Yes.

Chair Remke: -- act.

Trent Lange: I understand that.

Chair Remke: So you could see the difference, right?

Trent Lange: I can see the difference and just --

Commissioner Hatch: What actual differences do you -- are you concerned about that it would make?

Chair Remke: I'm concerned that it says "compliance with this paragraph," meaning this one issue of reporting. This one issue of reporting when you're earmarking funds meets your obligations under the title as to all reporting obligations you may have, which are much broader than this one provision.

Trent Lange: Yes, I cannot immediately myself see where that would have negative

ramifications. One thing I will say is that we have offered to Mr. Ung that we would be happy to engage in any cleanup legislation. If there are things like that, where you can point out that there could be negative ramifications, we'd be happy to work with our authors and authors also expressed willingness to do so if -- I don't believe that would make an issue, but if it is, then we would be happy to work with you on it.

Chair Remke: Okay, thank you. Any other further questions for Mr. Lange?

Commissioner Audero: I do.

Chair Remke: Commissioner Audero.

Commissioner Audero: So has your question about the complexity of the earmarking process that you didn't understand -- has that been answered?

Phillip Ung: No.

Commissioner Audero: Okay, could you just pose the question so that it can be answered and hopefully we have an answer for you. Not me.

Phillip Ung: Okay.

Commissioner Audero: Not me. I'm not touching that one.

Phillip Ung: At this point I'm-a turn it over to Trish, who has question.

Commissioner Audero: Okay.

Trish Mayer: Hi, so under 85704(c), \$500 -- less than \$500 earmark rule, I just want to make sure I understand what you said earlier. If a union or a membership organization receives contributions from its members earmarked to go to a candidate or measure or another committee of less than \$500, when the union or entity is reported as the source instead of the actual members, I think you mentioned that they would be subject to the contribution limit as opposed to the actual source of the contribution?

Trent Lange: I think one thing that some people have been confused about is the difference here between contributions and versus dues, fees, assessments, and similar payments, which is what section C applies to. The intent and I believe the language of this is that any voluntary contributions where somebody says, here's \$400, gives it to their union or to their membership organization. Make sure it goes to this candidate or anything else, that would not be -- that is not a due. That's not a fee. That is not an assessment. That would be subject to the normal contribution rules.

Chair Remke: Wait I have a question then, because then what -- in that very same section --

Trent Lange: Uh-huh.

Chair Remke: -- why does it say, "dues, assessments, fees, or similar payments for the purpose of making contributions or expenditures"?

Trent Lange: That is if the membership organiza -- if the money was -- if a union, for example, puts on an assessment of all of its members and says, we are asking -- we're putting on this assessment of \$100 for everybody to fight Proposition 99, that would be an assessment for the purpose of making contributions or expenditures for that particular proposition. That would clearly be considered earmarked and under this provision, they would be -- the union itself would be the one that would be considered earmarked because that being an assessment under \$500 would be excluded from earmarking so that the union itself would be the one that is earmarked and therefore traced along the path.

Commissioner Hatch: In that regard, the union then gave it to, say, a political party to then give to the committee for or against something, they would still be required to double disclose the earmarking so that you can see the path (overlapping).

Trent Lange: The union itself would be, not its thousands and thousands of individual members who were assessed.

Commissioner Hatch: Alright.

Trent Lange: On the other hand, if an individual union member or anybody else contributes, says, hey, here's \$400. Give it to this candidate. Give it to this measure. That's not a due, fee, or assessment. That's a regular contribution, or even if the union or the other membership organization says, hey, everybody. There's this important union -- this important measure that we want to fight. Click here to donate. That is also a voluntary contribution. It's not a due. It's not a fee. It's not an assessment. This is -- that would also be not excluded under this provision because it's not a due, fee, an assessment, so those contributions would be considered earmarked if they're otherwise considered earmarked. It's only the mandatory ones.

Trish Mayer: Under current rules, those -- the source of those dues that are contributed would be the individual donor, so in this case, the intermediary under our current rules, would be subject to the contribution limit, so if those funds were given to a candidate who had a \$1,000 contribution limit, that's the only amount that could be transferred over? Is that what you're --

Trent Lange: What we're saying is, yes, because the individual members are not being considered earmarked -- it is the membership organization itself -- it would be subject to that contribution limit because it is the -- considered the source of the funds as being earmarked as opposed to --

Commissioner Hatch: (Overlapping) to the small contributor PAC limitations.

Trent Lange: Yeah, small contributor PAC contribution, yes. As opposed to -- if they're allowed --

Phillip Ung: Sorry, Commissioner, we didn't hear your question.

Commissioner Hatch: Well, it really wasn't a question. I said, that money would be subject to the existing law small contributor PAC limitations, pure and simple, just as it is now as it would be then.

Phillip Ung: If it was given to a state candidate. In this case, I think Trish maybe talking about a --

Commissioner Hatch: Whatever.

Phillip Ung: Well, local candidates have smaller contribution limits.

Trish Mayer: We're talking about a limit on how much the committee can receive.

Phillip Ung: That's why she said \$1,000 is -- she was talking about potentially --

Commissioner Hatch: (Overlapping) are you talking about now?

Trish Mayer: I was just using a local candidate, for example, subject to \$1,000 contribution limit, just a general example.

Commissioner Hatch: Except that small contributor PAC limitations are for state races.

Phillip Ung: Right, this provision applies to state and local candidates.

Trish Mayer: It doesn't just apply to small contributor committees.

Commissioner Hatch: I beg your pardon?

Trish Mayer: This provision doesn't just apply to small contributor committees.

Commissioner Hatch: Well, there's the principle and then the label. The membership organization is the entity and they're defined under the law they act in accordance with those provisions to be a small contributor committee; that is, they don't take big contributions that would make them no longer qualified.

Trent Lange: The point of this provision in cases of candidates was to ensure that the membership organization itself is considered earmarked and therefore subject itself to whatever contribution limits there are, be it state candidates as a small contributor committee or in a local race. Whatever limits that membership organization would normally have, if it's earmarked that it be the one that's subject to it, that without this provision there's actually the possibility that a membership organization could do an assessment on all of its members, 1,000 members, \$100 a pop, \$200 a pop, give that \$200,000 and say, it's not our money. It's the money from the individual members that individually earmarked it. Yes, we're the intermediary so it's going to be noted on the record. We understand that that is noted in the record, but the contributor source due to the earmarking rules is considered to be whoever is earmarked and we believe that it's much more valuable for the membership organization and in the case of contribution limits, it should be the membership organization that is -- in the case of dues, fees, and assessments, that is responsible for abiding by those limits.

Chair Remke: Okay, Commissioner Hayward?

Commissioner Hayward: Okay, I think this is a question for both of you, because this is something I hadn't played out in my mind until about now. Maybe it's the low blood sugar; I don't know. So you've got a membership organization that has done an assessment and the assessment is for \$499 and so it falls within this and under this proposal, that payment is considered to be not earmarked. Does it show up at all in our disclosure regime? Does it show up on somebody's report?

Commissioner Hatch: Yes.

Commissioner Hayward: I'm not asking you.

Commissioner Hatch: Okay.

Commissioner Hayward: Thank you. With respect, because if it's not earmarked and it's the product of an assessment, what is it? Go. Trish, go.

Trish Mayer: Are you asking under current rules or the proposed?

Commissioner Hayward: I am asking under, well, under current rules, we know what -- the proposal declares this assessment to be not earmarked, not reportable as earmarked, not forwarded to the recipient as earmarked, but just not earmarked. If it's the product of an assessment with membership organization and it's under \$500 and it's not earmarked, what is it? Is it anything?

Trish Mayer: I think that's a question for --

Trent Lange: Our understanding is that it would be -- that the membership organization would have to do it in its reports just as under current law, as a contribution to itself. All we're saying is that it's not earmarked, considered earmarked, and therefore doesn't have to be passed along all those thousands and thousands of individual members.

Commissioner Hayward: So the one thing we've lost in the public information regime is that piece of information that shows that that was a contribution to the organization to go to somebody else.

Trent Lange: Except that the organization itself would show as earmarked and so the organization itself, if they gave to another committee and said, here are these earmarked funds from this membership organization, they're going to say, we are the earmarker.

Commissioner Hayward: Well, I find that a little misleading because if you've got \$499 that's earmarked for somebody, it's not really yours. You're an intermediary for somebody else, where if you're making a contribution as a membership organization of funds that you have discretion over, then it is correct to say that you're the source of those funds, but I'm not persuaded this helps. Let's put it that way. Thank you.

Trent Lange: I'll just say that I guess we would argue that in that case, because it was an

assessed -- I would agree with you if it was a voluntary contribution, but because this was an assessment, the membership (overlapping).

Chair Remke: (Overlapping) contributions and expenditures.

Trent Lange: Yes.

Commissioner Hayward: And I would just add that --

Trent Lange: Yes, that the --

Commissioner Hayward: -- people can opt out.

Trent Lange: And people can opt out.

Chair Remke: Okay, any further questions for Mr. Lange?

Commissioner Hatch: It's a waste of time.

Chair Remke: Okay. Thank you.

Trent Lange: Thank you.

Chair Remke: Commissioners, any additional comments or questions or is there a motion?

Commissioner Audero: I have a question.

Commissioner Hatch: Point of order. Oh, if it's a question only.

Commissioner Audero: No, go. What's your point of order?

Commissioner Hatch: This item is a part of the staff reports. And so it's not properly agendaized for a motion on any of these bills. And it's also -- it's a violation of the Bagley-Keene act to move an act on this measure and not only that, but it's been a longstanding practice of this Commission that every time they have a staff legislative report that they want to take action on, they remove it from this executive staff report and make it a separate action item. For whatever reason, the Chair didn't do that this month. She had a recommendation.

Chair Remke: This isn't my report or my recommendation, thank you.

Commissioner Hatch: You set the agenda, correct?

Chair Remke: I'm not going to get in a debate with you right now. This is not my report or my recommendation. This is the executive staff report.

Commissioner Hatch: My point of order's any motion to move for or against would be a violation of Bagley-Keene and our longstanding practice of fully disclosing to the public that we intend to take action on something.

Chair Remke: Well, that is not my understanding. It has been noticed, but I will leave it to general counsel. Unfortunately, our Bagley-Keene expert had to leave and we have to postpone our training, but I don't know if, Jack, you want to respond to the issue, but I will

say, I'm not even know if there's a motion.

Commissioner Audero: You asked for a motion. That was the response. (overlapping.)

Commissioner Hatch: Before a motion is made, I made my point of order. I'd like it disposed of.

Jack Woodside, General Counsel: I'd point out that we did notice this for discussion, as we can see, there's plenty of people that showed up to discuss this item, so it was out there for the public. The public has a seat at this table and if we can discuss it, we can take action on it.

Chair Remke: And I would add that the recommendation is to take action.

Jack Woodside: My recommendation: take action.

Commissioner Hatch: Is that a ruling?

Jack Woodside: That's my recommendation.

Commissioner Audero: So I have a question about that, so what if those who really know Bagley-Keene read our agenda and said, oh, I don't have to go because it's not an action item?

Commissioner Hatch: Exactly.

Jack Woodside: All I can offer is at this point, we can see that there's been lively debate on this and I think at this point, it's safe to assume that we can take action on it.

Commissioner Audero: But would you agree that if even one person was misled by the agenda, then this would be a violation of Bagley-Keene?

Jack Woodside: No, I don't think the way it was put out there was misleading, so if a person was misled, we can't help that. We're just trying to do the best we can. I think under Bagley-Keene, we just have to give notice that we are going to discuss an item.

Commissioner Hatch: That's not what we did, Jack. We just simply left it in the executive reports, which is not an action item for us to read and maybe ask questions about. In every single hearing that we've had for going back over two years, the only times that we've taken action on a recommendation on a legislative report is when the legislative report was not appearing as a part of the executive staff report and was a separate item with its own agenda.

Jack Woodside: And as somebody pointed out, under the Bagley-Keene, items shouldn't be labeled as discussions or actions unless that's all you want, so in other words, we don't have to label something an action item in order to take action on it.

Commissioner Audero: So if we have a concern about whether we're violating Bagley-Keene and we don't have the expert here, that should inform how we vote on this motion, right?

Chair Remke: I think we had the advice of our general counsel.

Commissioner Audero: Oh, but then couldn't our general counsel do the Bagley-Keene training instead of the AG?

Chair Remke: They do it for many state (overlapping).

Commissioner Audero: That's not my question, though.

Chair Remke: Sure, we can have the -- but that's not what we thought was best discussing the issue with our general counsel. Again, I think we're getting a little off subject here. There's been a point -

Commissioner Audero: We are.

Chair Remke: -- of order.

Commissioner Hatch: Ask for a ruling by the Commission on my point of order by vote. Is my point of order well taken or not, yes or not? Majority rules.

Erin Peth: Yeah, call the roll. Sasha?

Sasha Linker: Commissioner Audero.

Commissioner Audero: I'm not sure I know how to respond here, other than I have a concern. Yes, I have a concern that we are violating Bagley-Keene and given how much we have heard about Bagley-Keene from the Chair and what a grave concern this has been such that we are now supposed to be receiving a discussion by the AG, not our own counsel, about Bagley-Keene and what's right and what's wrong, yeah, I'd be afraid, so yeah, your point of order's well taken.

Sasha Linker: Commissioner Hatch.

Commissioner Hatch: Yes.

Sasha Linker: Commissioner Hayward.

Commissioner Hayward: I question that we've had this discussion anticipated and letters sent to us for easily two weeks. The agenda packet goes out 10 days before meeting, so that and I think we all knew some time before then. And to the extent that there's a technical deficiency in notice, I think that the people who get the agenda packet and read it should have some responsibility to raise it before 1:50 in the afternoon of a meeting that started at 10 that brought a lot of good people across the bridge and over the hills and through the woods to talk to us about the DISCLOSE Act, which by the way, I'm not really sure is the DISCLOSE Act you all think it is, because of the late amendments, but let's set that aside. So I would think that, you know, at this late hour, such objection is waived and so no, I don't think it's well taken.

Chair Remke: So that's a no?

Commissioner Hayward: That's a no.

Sasha Linker: Chair Remke.

Chair Remke: No.

Sasha Linker: Point of order is tied.

Chair Remke: Okay, I go back to, is there a motion on --

Commissioner Hatch: Yes. I move that we endorse the DISCLOSE Act, AB 249.

Chair Remke: Is there a second? Okay, that motion fails. If there's no other motion, we will not have a recommendation on that, so we will move forward. Believe it or not, there's still the issue remaining if there's any other questions regarding the executive staff reports.

Commissioner Audero: I do.

Chair Remke: Commissioner Audero.

Commissioner Audero: Oh, I guess for you. So in our last meeting, we talked about the budget --

Erin Peth: Yes.

Commissioner Audero: -- and I posed a question and I'm wondering if you have the answer to that.

Erin Peth: Could you refresh my recollection as to the question?

Commissioner Audero: Yeah, it is what -- wait, I bet it's in the agenda. I mean, sorry, in the minutes, but it was about that line item that had that larger number. Hold on, I'll find it.

Erin Peth: I don't have the answer. I will get that to you. I'm sorry. I will look back at my notes and we can -- I will get you the answer.

Commissioner Audero: Okay, thank you.

Erin Peth: I apologize.

Commissioner Audero: No, that's okay. Thank you.

Chair Remke: Okay, any other questions or comments? We're still in a meeting. Excuse me? Thank you. Any other -- okay, any other questions or comments on the executive staff report? Okay, hearing or seeing none, that will be submitted. I move to adjourn.

43. The Bagley-Keene Open Meeting Act, Presentation by the Office of the Attorney General. (Staff: Commission Counsel John Feser.) Deputies Attorney General Ted Prim and Julia Zuffelato will present an overview of the Act and its major provisions that cover all state boards and commissions, including notice and agenda requirements, public participation, closed session and meetings.

Erin Peth: Do you want to make a (overlapping)?

Chair Remke: Oh, I'm sorry. I have the public -- the Attorney General's office was unable to stay to this late time. They were unaware that it would run this late, so we have to reschedule our presentation.

Commissioner Audero: Oh, I have a question about that.

Chair Remke: Okay.

Commissioner Audero: So Commissioner Hatch had made a written request per our rules to have a particular agenda item on the agenda and it was unilaterally decided that that agenda item was not going to be put on the agenda, so I want to discuss how that can even happen and -- yeah, so two points. One, I want to discuss how that can even happen, so let's -- I'd like to talk about that.

Chair Remke: So the request, just so the public and the record is clear, is that Commissioner Hatch requested that the Commission's statement of governance principles be put on an agenda for an action item to make a motion to commit -- create a subcommittee to do research and issue a report as to whether or not the governance principles needed to be updated and if so, with recommended changes. As the policy has been and pursuant to those governance principles -- I don't have them right in front of me, but the Chair, as has been the practice, sets the agenda prioritizing issues and time and what we can fully staff and/or discuss in any one meeting. I said I would obviously put that on and I still intend to, but --

Commissioner Hatch: Said you put it on for September.

Chair Remke: Right, I know I said I'd put it on for September. Let me finish, please.

Commissioner Hatch: Okay, you were going someplace else with it.

Chair Remke: I'm going to the point where meanwhile, and during the last, I would say, four to five months, several questions have been raised from commissioners regarding protocol, procedures, Bagley-Keene, and the idea of creating a subcommittee without discussion as to proper protocol, I determined, pursuant to my delegated authority, that we should have training first on how we would conduct such a process and answer other questions that have been raised and as I told the Commissioners, my intention was to put on the statement of governing principles on October, as I told all of you, so the idea was that we'd have the training this month and the following month, that motion and that requesting would be put on the October agenda.

Commissioner Hatch: (Inaudible) going to be in October for my motion?

Chair Remke: Absolutely.

Commissioner Audero: That was my second question. I just didn't understand why the two

couldn't happen in the same month.

Chair Remke: Well, it just seemed because of the way the agenda was set up where I thought it would be smartest to have training at the end, so that we could get through the public matters without having everyone have to sit through that, that we would be discussing an item that I thought best that we have training and ask the AG's office about some of those issues, including the creation of a subcommittee and the public notice on those issues, things that I believe will come up and are -- should be addressed, so again, the only issue was, can we get the clarification on procedure before we go down a path, so that's the reason on the timing.

Commissioner Audero: So are we going to have both on the agenda next time?

Chair Remke: That will be my goal. Depends on the AG's office.

Commissioner Audero: Right, assuming the AG is available, then we would have the Bagley-Keene discussion first and then the agenda item?

Chair Remke: That would be my goal and we --

Commissioner Audero: So then that could've been done today, right?

Commissioner Hatch: What if they don't show again?

Chair Remke: Again, it was -- it's now 2:00.

Commissioner Audero: No, no, no, no, no, no, that was -- you misunderstand my question. The question is, it could have been agendized in that way today, Bagley-Keene and then the discussion, right, because that's --

Chair Remke: No.

Commissioner Audero: -- what we're going to --

Chair Remke: No, that is my point of pointing to the clock, because again, as several people had requested, there were 50 something people waiting for us to discuss that issue. Again, I was trying to move through the agenda and then have us have that training separately, so again, to have had a 45 minute to an hour training, which could be longer based on questions from commissioners, my concern was then -- now, obviously be into the 3:00 time with members of the public waiting for us to get through that, so again, that was the reason I did not do it that way today.

Commissioner Audero: Except that that really wasn't what was planned, right? You were going to limit everybody to just a name and a location and so that wouldn't have happened.

Chair Remke: Is there a question or a comment?

Commissioner Audero: Would that have happened?

Chair Remke: I really don't understand the question.

Commissioner Audero: Taking a page from Commissioner Hatch's book, I guess that was rhetorical. So the point is, we're going to have both on the agenda --

Chair Remke: Yes.

Commissioner Audero: -- in October?

Chair Remke: Yes.

Commissioner Audero: Excellent.

Erin Peth: We believe that the AG's office is available. They --

Commissioner Audero: That's great.

Erin Peth: -- double checked their calendars, but it sounds like they will be available on that October date.

Commissioner Hatch: Could we ask that that training be number one on the agenda and that we notice to the public that the regular order won't start until X time rather than -- so they don't have to rush here, get here at 10:00 and then find out that they're going to have to wait (inaudible)?

Chair Remke: Yeah, we can do that.

Commissioner Hatch: Thank you.

Commissioner Hayward: Related question.

Chair Remke: Yes?

Commissioner Hayward: Is it a violation of Bagley-Keene to present to staff questions I have about the application of Bagley-Keene that could be passed on to the AG's office that would then allow them to more efficiently gauge what they want to talk about with us?

Chair Remke: I'll leave that to Jack.

Commissioner Hayward: Because I think that would make a lot of sense.

Jack Woodside: Yeah, okay.

Commissioner Hayward: There's been stuff that's been bothering me from the first and it would be really nice --

Jack Woodside: Yeah, I would love to take --

Commissioner Hayward: -- to be able to --

Jack Woodside: - instruction --

Commissioner Hayward: -- signal that.

Jack Woodside: -- and give it to Ted.

Commissioner Hatch: So we'll just email you?

Jack Woodside: Yes.

Commissioner Hayward: Yes.

Erin Peth: Yeah, you can --

Commissioner Hayward: Awesome, thank you.

Commissioner Hatch: Just a clarification, so we can email you questions and you'll pass them on?

Jack Woodside: Absolutely.

Chair Remke: Is it accurate to say from the last discussion you had with Ted in preparation for this, the issue is just not to engage all commissioners? They can contact you directly regarding issues?

Jack Woodside: Say that again.

Chair Remke: I'm just saying the emailed questions should just go to you, not to the full commission. Is that the issue?

Jack Woodside: I think so, just one-way communications. I'll get them to Ted.

Commissioner Audero: Wait, why are questions without answers --

Chair Remke: Well, we can ask all this when Ted's here.

Commissioner Audero: Well, no, but here's the thing. We have perfectly capable counsel and so I have a question, because I'd like to know what the questions are that the commissioners ask, so why are questions that don't beget any answers, just, here is what I would like to hear about -- why does that violate Bagley-Keene?

Jack Woodside: I don't think it does. Sometimes when we're -- I'm having conversations with each of you, it's just, I think, more out of an abundance of caution that somebody doesn't jump in and start talking about the topic. We all of a sudden have this serial meeting that's --

Commissioner Audero: Sure.

Jack Woodside: -- possible. Now, if it's something I think -- if you want to see the questions and we can do it in a way that --

Commissioner Audero: -- nobody answers --

Jack Woodside: -- nobody answers, okay, then see any problem with that, so --

Commissioner Audero: We could just all agree to not answer.

Jack Woodside: Yeah.

Erin Peth: Well, if you want to, maybe email Jack the individual questions you have. He can do two things: forward them to Ted so that they can be addressed in the training and then maybe aggregate them and then recirculate them to the full Commission as a informational --

Commissioner Audero: But the other thing is, like, if somebody has already asked it, I don't want to ask and I don't want to bother and I don't want to take the time, so why don't we just CC each other in all the questions and we all agree not to answer them and then we're done?

Jack Woodside: I think as long as we agree not to answer, any way you want to do it is fine.

Commissioner Hatch: That would be most productive because if I see the questions already on there, I don't want to --

Chair Remke: Alright, I move to adjourn.

Commissioner Audero: Second.

Ayes: Commissioners Audero, Hatch, Hayward, and Chair Remke.
The motion passed 4 to 0.

The meeting adjourned at 2:03 pm.

Respectfully Submitted,
Sasha Linker
Commission Assistant
Approved October 3, 2017

Joann Remke, Chair
Fair Political Practices Commission